THE SCIENCE OF LEGISLATION.

TRANSLATED FROM THE ITALIAN

OF THE

CHEVALIER FILANGIERI,

BY

WILLIAM KENDALL.

Ουκ εςιν ȣδεν κρειττον, η νομοι πολει
Καλως τιθεντες.

EURIP. IN SUPPLIC.

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THE Tranſlator is induced to publiſh this volume by a favorable reception of his Analyſis. The principles of legiſlation continue to be diſcuſſed among all ranks. A rapid and unexampled diffuſion of intelligence daily accelerates the progreſs of liberal enquiry. Thus encouraged by the peculiar character of the times, he can ſecurely diſſeminate thoſe ſentiments of liberty and moderation, which pervade the writings of Filangieri.

In the preſent volume, the reader is not embarraſſed by an intricate treatiſe on any ſingle topic, but ſuddenly enlightened by a ſpirited and maſterly ſketch of the whole ſcience.

In the following books, this comprehenſive ſubject is examined *in the detail*; but amidſt reſearches ſo arduous and obſcure, the author's talents at once enable him to inſtruct by profound reaſoning, and charm by unuſual animation.

Filangieri, the Engliſh reader may be perſuaded, is a name neither unknown nor unnoticed in neighbouring countries. As a political philoſopher he has acquired ſuperior eminence. In Italy his writings have been long admired; and a tranſlation has already received unlimited applauſe in France. The work has alſo been circulated in Spain, and read with avidity. Soon after its publication, the government of that country, fearful leſt principles inimical to the ſpirit of deſpotiſm might be ſcattered among the people, conſidered it neceſſary to recall the tranſlation. Several copies, however, yet remain, ſecreted from the vigilance of inquiſitorial ſpies.

By an advertiſement prefixed to the Analyſis of this work, the public were informed that the author's death had prevented a completion of his plan; that ſeven volumes had been publiſhed during his life, and materials for the remaining books left properly arranged. His widow has ſince printed the eighth volume, which he had prepared for the preſs: a new edition of the whole work (with a ninth volume) is announced: and a life of the author, by the Avvocato, Donato Tommaſi, has lately appeared, entitled '*Elogio Storico del Cav. Filangieri.*'

Should

Should this volume receive adequate encouragement, the tranſlation will be continued. A life of the author will be given, and to the whole will be annexed an Appendix, containing obſervations on ſeveral paſſages of his work.

A few notes, naturally ariſing from the text, have been added by the tranſlator. Inclination prompted him to enlarge on ſeveral topics in the chapter relative to the Britiſh government; but he has only indulged his wiſhes to any conſiderable extent in a note reſpecting the popular repreſentation. Anxious to avoid ſuſpicion of a deſign to render his author the inſtrument of circulating private opinions on national politics, he has ſuppreſſed all further remarks.

EXETER, 14th *May*, 1792.

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THE

THE SCIENCE OF LEGISLATION.

INTRODUCTION.

WHAT are the ſole objects that have hitherto engaged the attention of the ſovereigns of Europe? A formidable arſenal, a numerous artillery, a well-diſciplined army. All the propoſitions that have been inveſtigated before princes, have been merely preparatory to the ſolution of a ſingle problem: *To find the method of killing the greateſt number of men in the leaſt time poſſible.*

The diſcovery of a murderous *evolution* has been propoſed as an object of reward. A gratuity for the Huſbandman, who in the time that others were forming one furrow, was alone capable of compleating two, hath not been once made a ſubject of conſideration: while the Gunner who poſſeſſed the art of loading a cannon in four ſeconds, hath been doubly recompenſed. So expert are we become in this deſtructive buſineſs, that we have it in our power, in the ſpace of a few minutes, to anni-

hilate twenty thouſand fellow-creatures. The perfection of an art ſo fatal to humanity opens to us the cleareſt proſpect of a fundamental defect in the univerſal ſyſtem of government.

For more than half a century hath philoſophy been declaiming againſt this military mania; for more than half a century have philoſophers been labouring to divert the attention of princes to more uſeful objects; nor, ſince the time of Monteſquieu, have we had an author who has not intimated to mankind the neceſſity of a reform in legiſlation. *There is ſcarcely a writer of any period*, ſays a great man, *whether Poet, Orator, or Philoſopher, whoſe genius is not fettered and confined by ſurrounding circumſtances.* Nature in every æra impreſſes (if we may uſe the term) the ſame ſeal on the minds of all: the ſame objects inſpire the ſame ideas. The preſent common object of thinking men is legiſlation. The errors of juriſprudence ſurround us; every writer ſeeks to expoſe them; and from one extremity of Europe to the other, a ſingle ſound is heard, which tells us, the laws of *Latium* are no longer calculated for Europe.

This union of voices, this univerſal clamour, this cry of reaſon and of philoſophy, has at length reached the throne. The ſcene has changed, and princes have begun to diſcover, that the lives, and the tranquillity of men, demand greater regard; that there are means, independent of force and arms, to arrive at greatneſs; that good laws are the only ſupport of national happineſs; that the good-

neſs

neſs of laws is inſeparable from their uniformity; and that this uniformity is not to be found in a legiſlation framed at intervals during twenty-two centuries,* promulged by different legiſlators, in different governments, to different nations, in which all the grandeur of the Romans is blended with all the cruelty of the Lombards.

Great would have been the progreſs towards the happineſs of the people, had it been demonſtrated to ſovereigns, that legiſlation deſerves a reform. But a more intereſting progreſs has already been made—the obſtacles are removed.

The people are no longer ſlaves: the nobles are no longer tyrants. Deſpotiſm has baniſhed feudal anarchy from the greater part of Europe, and manners have enfeebled deſpotiſm. Had not the vaſt machine of feuds firſt received a ſhock, no uſeful reform in the laws could have been expected. When the greater part of the human race was deeply immerſed in depravity; when all rights were uncertain, and the deciſions of the ſword were preferred to the decrees of juſtice; when oppreſſion prevailed on every ſide, becauſe thoſe, whoſe duty it was to obey the laws, were more powerful than thoſe who enacted them; when the hatred, inevitably ſubſiſting between weak and jealous neighbours, placed barriers on every ſide, impeding mutual communication; when every city, every country was divided; could a reformation in the

 laws

* The origin of Legiſlation may be deduced from the year of Rome, 303, when the laws of the XII Tables were enacted.

laws be undertaken? could ſo many oppoſite intereſts be brought to coincide? who, amidſt the gloom of a military, ſuperſtitious, and ferocious government, could have the courage to ſearch into an object ſo very complicated? who could have combined relations ſo numerous and various? Kings, who enjoyed not the greater part of their prerogatives, were too weak to ſupport ſuch an undertaking: the Nobles (who had diſſolved the bands which united them to the ſtate) were too powerful to ſuffer a reform to be attempted, whoſe firſt operation muſt have ſtripped them of the rights they had themſelves uſurped; and the remaining part of the Citizens, with minds debaſed and degraded, were too ignorant either to propoſe or to conduct an enterprize of this magnitude.

As the ſtate was then ſeparated into as many parts as it contained feuds, and each of theſe parts exiſting in ſolitary independence; talents, unaſſiſted by communication, were reſtricted to a certain ſphere of light and intelligence, which they could never exceed. Divided as theſe intereſts were, their very inſignificance muſt have tended to debilitate the powers of genius, and to prevent ideas from expanding. Legiſlation muſt have appeared an object too ſublime, and too complicated for a mind accuſtomed to no other ſky than that under which it was born; to no other ſpecies of government, nor other intereſts, than thoſe of an oppreſſive tyrant. In this ſituation of affairs, neither a Monteſquieu, nor a Locke would have

have appeared, nor any of thoſe ſages neceſſary for enlightening and directing the ſtate in important enterprizes. To break down theſe barriers, to give genius that degree of energy, which the execution of ſo difficult a taſk demanded, it was requiſite that ſovereigns, out of ſo many ſcattered maſſes, ſhould begin to form ſome connected bodies; that mutual ties ſhould be re-eſtabliſhed among mankind; and above all, that men ſhould ceaſe to be ſlaves; for nature has withheld from ſlaves the faculty of thought.

The firſt obſtacle being overcome, another difficulty yet remained. The public welfare demanded the removal of all oppoſition to the progreſs of intellectual improvement. Without this, every reform, particularly a reform in the laws, muſt have been defective in principle, and ruinous in its conſequences. The power of the nobles being ſhaken, it was neceſſary, in preference to any other object, to diſſipate thoſe errors which fanaticiſm had rendered ſacred, and ignorance, too eaſily ſeduced, had adopted. That this end might be accompliſhed, philoſophy came in aid of government, an event which has produced the moſt ſalutary effects. *Superſtition* exiſts no more. This avowed enemy of every uſeful reformation, this lever which ſhakes the earth, while it fixes its point of reſt upon the heavens; this tyrant over genius, that has in all ages declared war againſt thoſe whom, to the laſting benefit of others, but

their own temporary disgrace, nature hath condemned to be wise: that in Greece sentenced Socrates *to* die, loaded Anaxagoras with chains, banished Demetrius Phalereus; in Holland raised a pile for sacrificing to oblivion and to the zeal of a weak minister the works of Descartes; in England persecuted Bacon;* in France accused Gerbert of magic, and even disturbed the ashes of the solitary restorers of science and morality:—*Superstition*, which by perpetuating ignorance and error among men, would have for ever hindered or destroyed the beneficial influence of every proposed reformation; *Superstition has been proscribed:* while religion, which fanaticism had for ages bathed with the tears of thousands, and imbrued in the blood of nations, has become what it ought to be, and what in its primitive state it ever was, the bond of peace, and the basis of social virtue. The priesthood is no longer busied in matters of government: The state is more tranquil, and the altar better served.

All is changed—Political opinions themselves have lost that character of ferocity and intrigue, which instead of an useful, had a pernicious tendency. Sentiments, which if not asserted as maxims, were at least broached as opinions worthy attention, by a politician, who has obtained the praises, how much soever he may have hazarded the rights of mankind,§ are no longer heard. Let a new Machiavel now dare assert, that a prince who would support himself should learn *not* to be virtuous,

* Roger Bacon.

§ Machiavel.

virtuous, except when his neceſſities require it; that he ſhould preſerve with care his own property, and laviſh that of the public; that he ſhould not fulfil his promiſe, unleſs it can be done without diſadvantage to himſelf; that he ought not to *be*, but to *appear*, virtuous; that he ſhould *ſeem* humane, faithful, juſt, and religious, but be in reality the contrary; that it is not poſſible for him always to adhere to principles by which others acquire a virtuous reputation, ſince the neceſſities of the ſtate oblige him often to act in oppoſition to humanity and to religion; that he ſhould bend his ſpirit in obedience to the blaſt of fortune, as long as poſſible, without departing from right, yet make no ſcruple of committing wrong, if it promote his intereſt: Let this new Machiavel finally endeavour to ſeat vice by the ſide of the throne, all mankind ſhall riſe united to oppoſe him, and public deteſtation ſhall be the juſt recompence of his villainy.

A reform in the laws could not ſurely be deſirable at a time when thoſe who were to propoſe and conduct it thought and wrote in this manner. But at preſent, to all the advantages reſulting from a general change in opinion, is added another, the moſt neceſſary, but perhaps the leaſt eaſily obtained —The right of declaring the dictates of truth to princes, with impunity.

It is well known that in theſe latter times the ſubject of a great king in Europe, whoſe office it was to addreſs his prince at one of the moſt auguſt ceremonies of ſtate, at the moment of coronation,

when in other times the chains of the people were ſtrained; at ſuch a moment did this bold ſubject dare to call his ſovereign before the tribunal of public opinion, reminding him that from this tribunal he muſt one day receive judgment, and boldly defining the point at which his rights ended and his indiſpenſable duties began.* This language, which ſince the overthrow of Greece, and the ſervitude of Rome, had been no longer heard among mankind, is now become the general language of writers and philoſophers; ſo that if the concealing truth from princes be the conſtant cauſe of perpetuating miſery; if ſilence be in all ages the ſupport of tyranny and diſorder; if in fine, to obtain a reform in legiſlation, it be neceſſary firſt ſtrenuouſly to oppoſe the unſeaſonableneſs of antient laws, and the calamities occaſioned by weak and defective adminiſtrations; the obſtacle now ſurmounted is by no means inconſiderable. We have aſſumed the right of thinking and writing with a freedom that does equal honour to the princes who permit, and to the ſubjects who uſe this permiſſion to promote the general welfare.†

The obſtacles being removed, nothing remains for us but to undertake the reform of legiſlation. This appears the laſt ſtroke required to conſummate the

* In this ſtile was couched the celebrated oration of the Biſhop of Aix, delivered in the preſence of Louis XVI, on the day of his coronation at Rheims.

† *Rara Temporum felicitate ubi ſentire quæ velis et quæ ſentias dicere licet.* Tacit. Hiſtor. Lib. 1.

the great work of human felicity: and the ſituation of every ſurrounding circumſtance ſeems preparing its completion.

Europe, during eleven centuries the theatre of war and diſcord; cruſhed by the ruins of the Roman Empire; afflicted and flying before the arms of Attila; by turns poſſeſſed and ravaged by ſettlements of Barbarians, by incurſions of Normans, by the anarchy of feuds, and the ſacred wars of the cruſades; by continual conteſts between the prieſthood and the government; by religious diſputes, which perverted the moral ſyſtem and perpetuated ignorance; oppreſſed in ſhort by the tyranny of numerous petty deſpots; filled with fanatics and warriors, and every where inflamed by the deſtructive fury of parties; is now become the ſeat of tranquillity and reaſon. That ſtability of monarchies which has been produced by confederacy and alliance, oppoſes a barrier to the ambition of princes, and obliges them to ſtudy the true intereſts of their people. Law and legiſlation are become the chief ſubjects of converſation in courts. Already in aid of that portion of humanity which Europe poſſeſſes, a pacific revolution is preparing. The diſorders that oppreſs her inhabitants, governments have beheld in all their deformity. No longer diſturbed by the din of arms, they have heard the groans, they have obſerved the tears of a crowd of victims, which a legiſlation at once artificial, obſcure, intricate, and by no means adapted to the preſent ſtate of things, is every day ſacrificing. Already remedies

remedies for this malady are ſought in every quarter, and from every quarter appearances ariſe encouraging us to hope that the dawn of legiſlation is approaching. Shall *I* then venture to lend my aſſiſtance, in accelerating the arrival of ſo important a bleſſing.

The glory of a writer is to prepare uſeful materials for thoſe who govern. Princes have not leiſure for reflection. Conſtrained to act, agitated by an impetuous motion, they are unable to call forth the energy of their own minds. They muſt truſt to others the care of providing the means neceſſary to facilitate ſalutary enterprizes. *To the Miniſters of Truth then, to peaceful Philoſophers, belongs this ſacred office.*

I lament, but know not by what unhappy deſtiny the man of letters is not always admitted to diſcuſs the great intereſts of ſtate before princes. *He* cannot penetrate into that reſpectable aſſembly where the ſovereign preſides to fix the fate of citizens. The liberal philoſopher has no reſource but to truſt his ſoul to writings, mute interpreters of his ſentiments. But every thing is to be hoped for in an age when the ſpirit of literature is not incompatible with the ſpirit of ſovereignty, in an age when the rapid courſe of imagination is no longer impeded by the obſtacles with which deſpotiſm was wont to oppoſe it.

With this hope, I am induced to undertake ſo arduous, and ſo complicated a work. In writing the Science of Legiſlation, I have no other end

than

than to facilitate the undertaking of a new ſyſtem of laws by the ſovereigns of the preſent period.

It is remarkable, that among ſo many writers who have given themſelves up to the ſtudy of law, ſome have treated the ſubject merely as lawyers, ſome as philologiſts, ſome again as politicians, including in their plan one part only of this immenſe edifice: Some, like Monteſquieu, have reaſoned rather on what *has been* done than on what *ought* to be done: but not one has yet given us a complete and rational ſyſtem of legiſlation; not one has yet reduced this ſubject to a certain and regular ſcience, uniting means to rules, and theory to practice. This I undertake to do, in the following work on *The Science of Legiſlation,*

Ye Princes now on the throne, if it be your province to examine my principles and to cenſure my opinions, with the immortal Monteſquieu, I beſeech you not to condemn from the reading of a few minutes a work of many years: Fix not the reproach of fanatic innovator, on a writer who ſometimes paſſes the bounds of blind cuſtom, to ſeek uſefulneſs in novelty.

Man, inſtructed by the diſcoveries of his anceſtors, receives their thoughts as a patrimony, and this is a depoſit which he is bound to tranſmit to his deſcendants augmented with ſome opinions of his own. Though the greater part of mankind neglect this ſacred duty, I here avow my intention to fulfil it, equally eſtranging myſelf from the

ſervile

ſervile pedantry which would change nothing, and the arrogant vanity which would deſtroy all.

This work will be divided into ſeven books. In the firſt will be unfolded the *general* rules of the legiſlative ſcience; in the ſecond, laws *political* and *œconomical* will be treated; in the third, *criminal* laws; in the fourth, that part of the ſcience will be explained which regards *education*, *manners*, and *public inſtruction*; in the fifth we ſhall treat of laws which reſpect *religion*; in the ſixth of thoſe reſpecting *property*; in the ſeventh and laſt book, we ſhall ſpeak of laws, which relate to *paternal authority*, and the good order of families.

The multiplicity of objects comprized in this work, obliges me to prefix a plan. This will be a complicated picture, wherein the figures will be very minute, yet diſtinct. *I intreat thoſe who mean to peruſe the book, not to neglect this plan;* ſince it appears to me neceſſary for explaining the ſyſtem and order of my work, and giving a general idea of all the parts, which compoſe the immenſe ſtructure of legiſlation: more eſpecially does it ſeem neceſſary, in as much as I have it not in my power for the preſent to publiſh more than the two firſt volumes.

SCIENCE

SCIENCE OF LEGISLATION.

ANALYSIS* OF THE WORK.

LIB. I. IN every ſcience it is neceſſary to premiſe certain principles; the foundation of the edifice intended to be raiſed.

The firſt point, and the ſole and univerſal object of the legiſlative ſcience, is PRESERVATION and TRANQUILLITY.

This preliminary truth we deduce from the ſimple principles of the union of mankind, and from the very nature of man: and in the ſcience of government it is that point, wherein all the rays intended to be drawn from the circumference of the circle muſt concentrate.

But man cannot be preſerved without means, nor be tranquil without being ſecure from moleſtation. *Poſſibility* then *of exiſting, and of exiſting with eaſe; liberty of increaſing, improving, and preſerving his*

* The Author's words are, "Piano ragionato:" Analyſis, though not of a ſignification entirely ſynonimous, ſeems ſufficiently to convey the meaning.

his property; facility in the acquiſition of means conducive to procuring the neceſſaries or conveniencies of life; confidence in government; confidence in magiſtrates; confidence in his fellow-citizens; certainty of not being diſturbed while acting in conformity to the dictates of the law: theſe are the reſults of the univerſal principle of *Preſervation* and *Tranquillity.* Every part of legiſlation ſhould tend to one of theſe reſults. Every law which does not afford one of theſe advantages to ſociety, is conſequently uſeleſs.

Theſe principles being ſettled, we ſhall paſs on to unfold, with the utmoſt brevity poſſible, thoſe general rules, without which the ſcience of legiſlation deprived of fixed and certain grounds, would be at the ſame time vague and unſtable.

By beginning to diſtinguiſh the *abſolute goodneſs* of laws from their *relative goodneſs;* by determining the preciſe idea of each; by diſtinguiſhing the harmony that ought to ſubſiſt between the law and the principles of nature, and the relation it ſhould bear to the ſtate of the nation for which it is enacted; by unfolding the more general principles dependant on this double character of goodneſs ſo neceſſary to every law; by obſerving the conſequences thence derived; by ſhewing the errors, the neceſſary diverſity, and even frequent oppoſition of legiſlations; the viciſſitudes of codes; the neceſſity of correcting them; the obſtacles which render theſe corrections difficult, and the precautions which make theſe obſtacles vaniſh; by taking into view,

I ſay,

I ſay, all theſe objects, we ſhall do no more than give a general idea of the theory of the *abſolute goodneſs* of laws, and prepare ourſelves for an examination of the far more complicated theory of their *relative goodneſs*: which forms, if we may uſe the expreſſion, the aggregate of all the general rules of legiſlation.

If this goodneſs conſiſt in the relation which laws ought to bear to the ſtate of the nation for whoſe uſe they are enacted, we muſt ſee what are the component parts of this *ſtate*. We ſhall find them in the nature of the government, and conſequently in its principle of action; in the genius and inclination of the people; in the climate, a force ever active though ever concealed; in the nature of the ſoil; in the local ſituation; in the greater or leſs extent of the country; in the infancy or maturity of the people; and in the religion, a divine force, which has a powerful influence on the manners of the people, and ought to engage the principal attention of the legiſlator.

They who may read this book, muſt not be ſurpriſed if they find ſome of thoſe ſubjects ſlightly touched upon, which the Author of the Spirit of Laws has ſo diffuſely treated. When they arrive at this part of my work, they will ſee, that our object is entirely different.

Monteſquieu ſeeks in theſe relations the *Spirit* of Laws, and *I* ſeek the *Rules*. *He* attempts to find in them reaſons for what has been done, and *I* attempt from the ſame ſource to deduce rules for what ought

to

to be done. My very principles will be, for the greater part, different from his: things will be conſidered under another aſpect; contenting myſelf with thoſe enquiries alone which tend to my preſent purpoſe, and willingly rejecting whatever decoration and ſcientific pomp might uſurp over that ſpecies of temperance, which ought to predominate in works conſecrated to public utility; content, I ſay, with this ſobriety of erudition, I ſhall confine to a few ſheets, a theory, which differently managed would demand numberleſs volumes. I cannot, however, omit confeſſing how much I owe to the labours of this great man.* It is a tribute of gratitude which I offer to one who has thought before me, who by his very errors has conducted me to the paths of truth.

From our reſearches into the relation which the laws ſhould bear to theſe various objects, we ſhall deduce the *general rules* of legiſlation. This will be a part of the ſcience which may be rendered uſeful in every government, in every climate, at all ſeaſons, and under all the particular circumſtances of the ſituation, extent, and fertility of the country: cultivation, genius, infancy, or maturity of the people. This will be the aggregate of thoſe general principles whereunto the particular ones thence developed muſt conſtantly be referred. It is this, which by generalizing our ideas of legiſlation, will afford us an opportunity of obſerving the different objects, the different views, and the different tone neceſſary to

* Monteſquieu.

to be aſſumed among different people, or even the ſame people at different ſeaſons; will make us obſerve in the variety of conſtitutions and forms of government the different faults attached to each, and the diverſity of remedies neceſſary to be applied; will diſcover the ſole principle of action that produces political motion in every civil ſociety, and point out the different direction that ſhould be given to this ſole principle in different governments; the influence which the univerſal genius of nations, and the ſpirit of the age as well as the particular genius and inclination of the people for whom it is intended, ſhould have on the ſpirit of laws; what effects may be derived from the climate either by ſeconding its influence when uſeful, or oppoſing it when deſtructive. This will enable us to ſee in what manner the nature of the ſoil, its fertility, its barrenneſs, its extent, its ſituation, ſhould influence the economical part of legiſlation; and what a diverſity muſt be produced in the moral part by the errors of falſe religion and the excellence of the true; how, amidſt a nation involved in the firſt, we ſhould ſuſtain with one hand what we overthrow with the other; and how among a people enlightened by the ſecond, we muſt guard theſe doctrines from impoſtors who pervert, and infidels who bring them into diſrepute: this in ſhort will be a part of the ſcience, which by giving us occaſion to obſerve the different ages of nations, and the different periods of their life, will point out to us how legiſlation ſhould attend to theſe different

periods; how it ſhould adapt itſelf to their infancy, how make uſe of the fervor of their youth, how it ſhould wait for and take advantage of the favourable æra of their maturity, and how prevent their decline and death.

Theſe will be the firſt views of this work. But theſe general views would only give us a confuſed idea of the whole, or rather of the mere ſuperficies of this immenſe ſtructure. To arrive at a perfect knowledge of it, we muſt obſerve its parts; the relation each of theſe ought to bear to the other, the materials of which the edifice ſhould be compoſed, the foundation on which it ſhould be raiſed.

In order to ſucceed, we ſhall begin by decompoſing the vaſt machine of legiſlation, and diſtinctly conſidering its parts. Every thing will be reduced to a minute examination, and objects the moſt concealed and leaſt known, will not on that account be paſſed over:—ſince in government, as in nature, it is by the moſt obſcure fibres of plants hidden in the bowels of the earth, that the moſt majeſtic woods are nouriſhed and ſupported. We ſhall therefore begin with laws *political* and *economical*.

Lib. 2. The objects of theſe laws are two, *Population* and *Riches*. The ſtate has occaſion for men, and men muſt have means of ſubſiſtence. Their number is always proportioned to their happineſs. Theſe two objects then, which compoſe national felicity, are reciprocal. To population we ſhall direct our firſt attention.

After

After ſome ſhort reflections on the ſyſtem of juriſprudence adopted by the ancients, and particularly the Jews, Perſians, Greeks, and Romans, we ſhall proceed to demonſtrate that no encouragement to population can avail, unleſs obſtacles be firſt removed. On this rock the greater part of legiſlators have ſtruck. Let us turn over the duſty and numberleſs volumes in which the chaos of European legiſlation is compriſed, and we ſhall find no one government that has not reſerved ſome prerogatives for the fathers of families, that has not granted ſome privileges and exemptions to thoſe citizens who have given a certain number of children to the ſtate; that has not provided ſome expreſs laws to increaſe the number of marriages. But in ſpite of all, the ſterility of nature continues; procreation is ſlow; in the very boſom of voluptuouſneſs marriages are rare; a vaſt grave, in which a whole generation with all its poſterity diſappears, is daily opening, and Europe has need of and could contain at leaſt an hundred million more inhabitants. After having demonſtrated theſe truths by the cleareſt calculations, who can entertain a doubt that there is in this inſtance a fundamental error in the ſyſtems of legiſlation?

I do not deny that the means hitherto adopted by legiſlators for the encouragement of population, have had ſome degree of utility, yet they can be conſidered only as ſo many ſlight impulſes, which might perhaps have accelerated the motion of the machine, had no obſtacles oppoſed; but the reſiſt-

ance of the one infinitely exceeds the influence of the other.

We muſt then ſearch for theſe obſtacles, and we muſt alſo find means to overcome them. To theſe two objects we ſhall reduce that part of the legiſlative ſcience which reſpects the multiplication of the ſpecies.

By obſerving the diſtreſſes of the people, and the wretched ſtate of agriculture; the luxury of courts, and the miſeries of the country; the exceſs of opulence in the hands of a few, and the want of neceſſaries in the majority; the ſmall number of proprietors, and the immenſe number of thoſe who are not proprietors; the multiplicity of reſources united in few hands; the abuſe of eſtates; the caprice of laws, and the rapacity of finance; the eſtabliſhment of ſtanding armies, and the celibacy of ſoldiers; the misfortunes which their maintenance occaſions among the people, and the chaſm which their celibacy leaves in generation; the double obſtacle to population which it occaſions, and the terror it affords to the liberty of the citizen; by obſerving the progreſs of public incontinence and its origin, the poverty to which it owes its riſe, and the violent celibacy of ſome claſſes of citizens by which it is excited, the errors of juriſprudence which protect it, and the ſterility conſequent thereupon; by obſerving, I ſay, theſe and other ſimilar evils which diſtreſs Europe, we ſhall with facility diſcover the real cauſes, and the true obſtacles that impede the progreſs of population in the nations by which it

is inhabited, and conſequently ſhall have no great difficulty in finding the proper remedies that a wiſe legiſlation ought to apply.

Having treated in this manner, and on theſe principles, that part of political and economical laws which reſpects the multiplication of the ſpecies, we ſhall turn our attention to the other object of theſe laws. We ſhall begin to ſpeak of riches.

However barren this object might have appeared in the politics of thoſe ages, in which poverty was the primary ſtep to the virtue of the man and the citizen, it is now become the firſt principle of national felicity. This reflection will lead us on to the examination of a truth, in the knowledge of which we are deeply intereſted: it is, that we owe all our proſperity to corruption, and that to arrive at greatneſs we have been obliged to abandon thoſe virtues whereby the antients were conducted to the ſame end. Strange prodigy of human inconſtancy! Induſtry, commerce, luxury, and the arts, means which in other times contributed to enfeeble ſtates and perhaps gave up Tyre a prey to Alexander, and Carthage to Scipio, are now become the firmeſt ſupport of a people. And in truth, ſince the time of the foundation and overthrow of empires has paſſed away; ſince *that* man is no longer found, before whom the whole earth was ſilent; ſince nations, after the repeated ſhocks and perpetual conteſts either of ambition or liberty, have at length ſettled in a ſtate of repoſe, by which they are rather induced to ſeek tranquillity than greatneſs and glory;

glory; ſince gold has become the univerſal meaſure, and the greatneſs of ſtates is reduced to a matter of calculation; ſince the commercial and agricultural have triumphed over the warlike nations; ſince the deprivation of merchandize, the excluſive trade in ſpice, and the importation of cinnamon from the Indies have been ſources of the moſt fatal contentions; in ſhort, ſince wealth is no longer the means of corrupting the people, becauſe it is no longer the fruit of conqueſt, but the reward of aſſiduous labour, and of a life entirely employed; riches, and the channels whereby they are conveyed, are with reaſon become the principal objects of legiſlation.

What then muſt be the cares of the legiſlator on ſo intereſting a point? We ſhall ſeparate them into two claſſes. He muſt procure wealth for the ſtate; he muſt divide it well, diffuſe it equally. What means then ſhould be employed to obtain the firſt of theſe ends, and what to arrive at the ſecond? If agriculture, the arts, and commerce, be the three ſources of wealth, what kind of protection is proper for each? which of theſe merits the preference of the laws; and what circumſtances ſhould decide this preference? how are we to reconcile the progreſs of the one with the others? how protect agriculture in an agricultural country, without neglecting the arts? how unite *their* improvement with that of commerce? how extend the views of the huſbandman to trade, and of the trader to huſbandry? how unite each to the other

other by cloſe and continued relations? what obſtacles are oppoſed to this union by the abuſes of adminiſtration, by the extreme inactivity of government, by the caprice of the civil laws, by the barbariſm of the feudal codes, by the remains of the antient ſpirit of paſture and hunting of our ſavage progenitors, by the legal attempts againſt real and perſonal property, by the courſe of public juſtice, by the abuſes of public credit, by the alienation of the revenues of the prince, by national debts, by excluſive privileges, by corporations, by falſe maxims in politics, and by the preſent ſyſtem of taxation? If by its errors this ſyſtem cauſe at the ſame time the ruin of population, of agriculture, of induſtry, and of commerce; if it eſtrange men from marriage, and depopulate the country; if it unnerve the arm of the artiſt, and ſhut up the ports of nations; if it endanger the ſecurity of the citizen, and the liberty of the man; if it deprive the traveller of repoſe, and the merchant of property; if it expoſe both to all the ſnares of a complicated legiſlation, which ſows crimes with prohibitions, and penalties with crimes; if it alienate village from village, town from town, and city from city; if it introduce a ſtate of war, and diſſeminate diſcord among the members of the ſame body, among the ſubjects of the ſame empire, among the ſons of the ſame country; if it occaſion the rights of nations to be violated by the very men who ought to protect them, the rights of the citizen by the citizen, thoſe of the man of

the people by the man of the prince, and thoſe of the merchant by the financier; if, in a word, under whatever view the preſent ſyſtem of taxation is conſidered, it be always found the proximate cauſe of the ruin of nations, and the miſery and oppreſſion of the people, in ſpite of the moderation and humanity of thoſe who govern: what are the neceſſary amendments which the legiſlative ſcience ſhould propoſe with reſpect to this object? on what principles ſhould the grand theory of taxation be founded; on what objects ſhould taxes fall; what claſs of citizens ſhould more immediately pay them? how muſt we proportion them to the ability of the people? how aſſeſs them on the net produce of the revenue of the nation? how aſcertain this net produce? how diminiſh the number of direct contributors favouring at the ſame time the increaſe of the tribute? how combine by a different ſyſtem of contribution, a juſt proportion, with the leaſt difficult, leaſt expenſive, and leaſt arbitrary exaction, the eaſe of the people, with the opulence of the body politic, with the proſperity of agriculture, with the arts and with commerce, and the riches of the nation with the riches of the ſovereign? How ſhould theſe means be employed for facilitating the diffuſion of wealth? what obſtacles oppoſe this diffuſion? what reſiſtanee may be apprehended from luxury? under what aſpect ſhould luxury itſelf be conſidered? how be regulated without offence to the liberty of the citizen? and how by its aſſiſtance may exceſs of opulence be

prevented

prevented, which only leads to excefs of mifery? what are the cafes in which even he who is fupported by the aid of foreign induftry fhould be confidered as a neceffary inftrument to the profperity of a ftate? what nations of Europe ought to have regarded *paffive luxury* as the fupport of their agriculture, their induftry, their commerce?

Thus have I given a flight fketch of the feries of principal objects intended to be taken into conſideration in the fecond book, wherein political and economical laws will be difcuffed. We fhall pafs on thence to criminal laws.

Lib. 3. If population and riches be the objects of political and economical, *fecurity* and *tranquillity* are the fcope of criminal laws. The firft tend to the *preſervation*, the fecond to the *repoſe* of the citizen; in which two objects, as we have before faid, the whole fcience of legiſlation is comprehended.

By examining into what muft be underſtood by tranquillity, we fhall find it to be inſeparable from ſecurity, and that this ſecurity can conſiſt in nothing but the conſciouſneſs or idea which every citizen ought to entertain, of not being in danger of diſturbance, while acting conformably to the dictates of the laws. Now this ſpecies of political liberty, which enſures all claſſes, all conditions, all orders of civil ſociety, which keeps the magiſtrate within bounds, and gives to the weakeſt citizen the united ſtrength of the whole nation; this voice which cries to the powerful '*thou art the ſlave of the law*,' and reminds *the rich that the poor man is his equal*;

this

this power, which in the actions of mankind, invariably overbalances any ſelfiſh benefit to be derived from a violation of the laws by the greater advantages which attend an obſervance of them, can only be the reſult of the criminal part of juriſprudence. On the following plan then we ſhall treat that part of the legiſlative ſcience which relates to the enacting of theſe laws. We ſhall begin with examining in what manner judiciary accuſation and defence ought to be conducted in a new legiſlation; what ſhould be the order of criminal ſuits; what the principles and rules to determine the proceedings; what the nature and form of the acts which ſhould conſtitute them; what would be the moſt ſalutary means of extirpating from a nation the noxious weed of calumny; whether it would be prudent to adopt any of the laws of the ancients particularly directed to this object; whether the tedioufneſs of ſuits be favourable to the liberty of the citizen; whether the ſyſtem of dragging the accuſed perſon to priſon before the offence is aſcertained, and there confining him till the termination of the ſuit, be not inimical to this invaluable privilege; whether the laws may deprive a citizen of his perſonal liberty in order to be aſſured of his innocence, whether they may ſuppoſe him guilty becauſe accuſed; whether they may injure before they have condemned him; whether it be not in capital crimes alone that this violent, but then neceſſary ſtep ought to be taken, becauſe with whatever puniſhment the accuſed might be threat-

ened,

ened, whatever ſecurity might be demanded from him, they would be always inſufficient to prevent his flight; whether, in all other caſes, it would be prudent to adopt the Engliſh law of *habeas corpus*: what modifications might be given to this law, as well in favour of the perſonal liberty of the citizen, as of the public ſafety; in what caſes the confeſſion of the criminal ſhould be required, and in what manner it ſhould be ſought from him; whether in ſhort, it would not be more juſt, and more conſiſtent to diſpenſe with, than to force it from his lips by the aid of torture.

Paſſing from the examination of the principles, by which in a wiſe legiſlation it would be proper to conduct the order of criminal proceedings, and judiciary accuſation and defence, to thoſe whereby the nature of actions, which the law ought to conſider as crimes, ſhould be aſcertained, as well as the manner of puniſhing them, we ſhall diſtinguiſh which of theſe crimes ought to be conſidered as public, and which as private; which as offenſive to the Deity, to the ſovereign, to the government, to public order, to public faith, and to the rights of nations; and which to the private ſecurity of the citizen, to his life, to his honour, to his property, his family and deareſt rights. We ſhall then examine in what manner the law muſt find puniſhments adapted to the nature of every ſpecies of crime; and how proportion them to the degree of guilt; in what manner legal ſanction ſhould diſtinguiſh the perſon of the delinquent, the circumſtances

cumſtances of the crime, the facility of commiſſion, the injury which the greater or leſs hopes of impunity inſpired by this facility may occaſion, and the greater or leſs inſtigation the citizen may have to commit it; how, when, and with what moderation, the legiſlator ſhould avail himſelf of capital puniſhments; to what offences it might be prudent to annex the puniſhment of infamy; how puniſhments of this nature ought to conform to, and not oppoſe the public opinion; with what reſerve, what ſolemnity, what economy they ſhould be uſed by the legiſlator; how the idea of infamy vaniſhes in proportion to the number of thoſe rendered infamous; how pecuniary puniſhments ſhould be conducted, whether they ought even to have a place in the plan of a good criminal legiſlation; whether (having determined to make uſe of theſe puniſhments) the wealth of the offender ſhould be taken into conſideration, as well as the circumſtances of the perſon offended, and the nature of the offence; whether thoſe puniſhments which deprive criminals of the company of other citizens, rendering them at the ſame time uſeful to ſociety, ſhould be preferred to all others; whether amid the multitude of crimes there be any which the legiſlator ought not to puniſh; whether in ſecret crimes, proportionate puniſhments may not be diſpenſed with, on account of the greater hopes of impunity which theſe crimes ſuggeſt; whether in real felonious offences (not thoſe to which deſpotiſm has given this appellation) it might be proper for a moment to caſt

a veil

a veil over moderation, as in antient times the ſtatues of the Gods were concealed; whether, in ſhort, impunity be the neceſſary conſequence of exceſſive rigour, and whether the *certainty* of a moderate puniſhment would not have a ſtronger tendency to deter men from the commiſſion of crimes than the fear of one far more ſevere, when that fear is accompanied with the hope of remaining unpuniſhed.

All theſe objects will demand our attention in the third book of this work, in which we ſhall conſider criminal laws. We ſhall then proceed to thoſe reſpecting education, manners, and public inſtruction, which will be comprehended in the fourth book.

Lib. 4. Though penal laws may prevent crimes by terrifying the citizen with threats of puniſhment, they can be of no avail to the encouragement of virtue. That ſpecies of negative honeſty, which is derived from the fear of puniſhment, always favours of its origin: it is puſillanimous, it is low, it is languid, it is utterly incapable of thoſe exertions which virtue, ardent and unreſtrained, demands, when rouſed by the influence of noble paſſions.

Fear then may diminiſh the number of delinquents; but can never give birth to heroes. This ſublime production cannot be derived but from the union of various powers, all directed to this common object. Education being conſidered as the chief of theſe powers will call our firſt attention. Education is either *public* or *private*. The former

former is reſerved for governments; the latter for fathers. Laws can only direct the firſt: they cannot, nor ought they ever to penetrate into domeſtic receſſes. In theſe the father is king, magiſtrate, legiſlator, as far as regards the education of his children.

The law then having authority to direct public education alone, and having no reaſon to expect from any other cauſe uniformity of principles, maxims and ſentiments, ſhould be careful to abandon the ſmalleſt part of the citizens poſſible to domeſtic inſtruction. To obtain this point, we ſhall propoſe a plan of public education for all the claſſes of the ſtate. I foreſee that at firſt glance this idea will be conſidered as one of the ſlow and painful reſearches of a plodding philoſopher, who imagines he obſerves every object in the confined circle of viſion which ſurrounds him: but when this ſhall be explained, when means ſhall be offered for putting it into execution, and when it ſhall be found that theſe means are the moſt ſimple and eaſy; then, I truſt, a different opinion will be entertained, and it will be confeſſed to the honour of the author, that this is far from being a vain project.

Having treated of education, we ſhall proceed to the regulation of the paſſions, and begin to analyſe the ſecond power productive of virtue; without the knowledge and uſe of which, a more miſhapen, more uſeleſs, or more pernicious work than legiſlation cannot proceed from the hands of man. This will be one of the moſt intereſting

ſubjects

ſubjects of my undertaking, becauſe on this depends the ſolution of all the moral problems in the legiſlative ſcience; on this depends the eſtabliſhment of a truth, in the knowledge of which we are intereſted more than in that of any other, but which has need of being well explained, as it militates much againſt a common prepoſſeſſion.

It is imagined by all that virtue cannot take root amidſt national opulence. Wretched opinion! to this perhaps we owe the preſent unhappy ſtate of legiſlation. Is the lot of humanity then ſo miſerable that it muſt be either poor or vicious? When riches are become neceſſary to the preſervation and proſperity of ſtates, muſt virtue be excluded from civil ſocieties? cannot agriculture, commerce, and the arts be carried on by virtuous hands? nay, ſhall luxury itſelf, at preſent become neceſſary to the diffuſion of wealth, be incompatible with good morals? was the ferocious ſpirit of war of the antients, becauſe united with the ſpirit of frugality, more nearly allied to virtue, than the pacific and laborious ſpirit of the moderns becauſe united with the ſpirit of luxury? This is in truth the common opinion of moraliſts, but we ſhall be bold to ſhow that it is rather their common error. We ſhall demonſtrate that ignorance alone of the different roads apparently oppoſed to each other, but really derived from the ſame principle and leading to the ſame end, has given riſe to an error ſo ſhocking to humanity. We ſhall ſhow how by taking advantage of the

great

great movement of the human heart, by giving a direction analagous to the preſent ſtate of things to that principal paſſion on which all the reſt depend, that paſſion at once the fertile ſource of ſo much good, and ſo much evil; of ſo many uſeful, and ſo many pernicious propenſities; of ſo many diſorders and ſo many remedies; by taking advantage, I ſay, of *ſelf-love*, a wiſe legiſlation will be enabled to introduce virtue amidſt modern opulence by the ſame means that the antient lawgivers introduced her among the legions of old.

After having inveſtigated the great theory of the régulation of the paſſions, on which depends the regulation of manners, we ſhall turn our attention to public inſtruction, which in the preſent book is the third object to be taken into conſideration. Who can fail to obſerve the influence this muſt have on the proſperity of a people, on their liberty, and even on their morals? If man under the direction and perſuaſion of reaſon act with greater energy, than when force or fear impel him, unacquainted with his deſtiny; if the times of ignorance have ever been times of ferocity, intrigue, meanneſs, and impoſture; if defective intelligence, by caſting a veil over all things, by rendering every right uncertain, by changing, obſcuring, and perverting maxims and doctrines, have imbrued thrones and altars in blood, have given birth to tyrants and rebels, have offered to error ſo many martyrs, to truth ſo many victims, to fanaticiſm ſo many piles, to impoſture ſo many followers, to religion ſo many

hypocrites

hypocrites and enemies; if involved in ignorance the prince be never ſafe from the people, the people never ſafe from the prince; if reſpect be but meanneſs, empire but force, obedience but fear; if the magiſtracy be arbitrary, laws uncertain, errors eternal and venerated, corrections hazardous and derided, public opinion deſpiſed, adminiſtration the patrimony of flatterers who ſurround the throne, betraying the prince with one hand and the people with the other; if true wiſdom, ever accompanied by juſtice, humanity, and prudence, invite not men to crimes; if, ſecure of obtaining ſooner or later the triumph ſhe deſerves, ſhe have no need, like impoſture, to purchaſe it with the blood and misfortunes of mankind; if philoſophy by proclaiming truth with intrepidity and zeal, by demonſtrating to mankind the tragical effects of the tyranny, ſuperſtition and madneſs of kings, the prejudices of the people, the ambition of the nobles, and the corruption of courts, by diſcovering to princes their true intereſts, and ſometimes obliging them to bluſh at their faults; have neither kindled the flame of diſcord, nor produced factions in the ſtate, nor ever, like ignorance, ſeized the dagger of regicide; in a word, if thoſe who rule, as well as thoſe who obey, find their true intereſts in the improvement of reaſon; it is right that the Science of Legiſlation ſhould not be ſilent on a point ſo intereſting, though ſo much neglected in our codes: it is right ſhe ſhould examine what obſtacles oppoſe this improvement, and what are

the means to remove them; what the direction to be given to talents; how under the auſpices of liberty to recall them to the ſtudy of their country; how to alienate them from purſuits more ſplendid than uſeful: it is right ſhe ſhould conſider how the meditations of philoſophers may be made to precede the operations of government, and the miniſters of truth to prepare the way for the miniſters of princes, in all that regards the public welfare. She ſhould conſider how to avail herſelf of their miniſtry in order to diſpoſe the minds of men to neceſſary reformations and uſeful novelties; how to profit by diſcuſſion, that fertile parent of truth; diſcuſſion, produced by the diverſity of opinions, when authority ceaſes to influence the pen of the writer and retards not the courſe of his ſpeculations; how to direct all the different talents of men to one common object; how induce the fine arts themſelves to pay a tribute to public utility; how find out and multiply the channels whereby the ſuperior underſtanding of the capitals might be diffuſed over the provinces, and the precious depoſit of uſeful knowledge be rendered more common; how finally to obtain, that the citizens themſelves, even thoſe employed in the moſt ſubaltern arts, may be informed of their duty to God, to themſelves, to their families, to the ſtate; may entertain juſt ideas of the man and the citizen, and be ſufficiently inſtructed to know all the dignity of their own character and the reſpect which it demands.

Theſe

Theſe are queſtions too intereſting to be paſſed over in a work, whoſe object is diſtinctly to analyſe all the links which compoſe that myſterious chain, whereby legiſlation ſhould lead men to happineſs. We ſhall next turn our attention to religion. The principles whereby that part of the ſyſtem ſhould be regulated, which reſpects the worſhip and religion of the people will be compriſed in the fifth book of this work.

Lib. 5. Public order, private tranquillity, the liberty of the Citizen requiring that the law ſhould not ſeek to know or wiſh to ſee all; that authority ſhould pauſe at the entrance of the citizen's habitation, and reſpect this aſylum of his peace and of his liberty, that ſhe ſhould not ſeek to penetrate into his thoughts or his intentions, but leave free the courſe of his deſires and conſider him innocent though guilty, as long his guilt be not manifeſt; in a word, detaching from the cognizance of the law all that is hid from her eyes, requires, at the ſame time, that another rein ſhould ſupply this neceſſary deficiency, that another tribunal, another judge, another code ſhould regulate the ſecret actions of the citizen, controul his ſecret tranſports, encourage his hidden virtues, and direct his very undiſcoverable deſires to the common good; ſhould in ſhort oblige him to be juſt, honeſt, and virtuous even in thoſe places, at thoſe moments, and under thoſe circumſtances in which he is far removed from the eyes of the law and her miniſters. This is the work of *religion*, when neither enfeebled by

infidelity, nor corrupted by bigotry: Theſe two extremes, whereof a conſtant experience teaches us that the firſt is always the conſequence of the ſecond; one of which deprives religion of its power, and the other makes it the inſtrument of crimes, enormities, and horrors, which, to the diſgrace of humanity, already too often accompany the bloody ceremonies of ſuperſtition; theſe two extremes ought to be equally prevented by the laws.

To this general object then will be directed all the principles which we propoſe to inveſtigate in the fifth book.

We ſhall examine into the nature of that protection which legiſlation ſhould afford to religion and worſhip; what *direct* and what *indirect* means it ſhould employ to prevent the two extremes whereof we have already ſpoken; what privileges it ſhould grant to the clergy, and what dependance it ſhould require in return; what rights ſhould be given to the elders of the church, and what ſpecies of magiſtracy ſhould watch over the uſe they might make of them; on what principles the article of *eccleſiaſtical immunity* ſhould be conducted; how far *real* and *perſonal* immunity ſhould be ſuffered to extend; what reſtrictions ſhould be given to *local* immunity, and whether it afford any encouragement to crimes; what requiſites the law ſhould demand from each individual of the clergy, and by what proportion their number ſhould be regulated; what religious orders may deſerve the partiality of

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the laws, and whether any of theſe orders may be either aboliſhed or reformed; what ſhould be the age of perſons conſecrated to holy offices, and what direction the laws may give to their preaching; laſtly, what means ſhould be adopted to provide for their wants: a ſubject peculiarly intereſting, on which endleſs reforms have been attempted, endleſs writings publiſhed, but which will ſtill remain unſettled until a remedy for the evil in its origin ſhall be diſcovered, until a reformation ſhall be directed to the very nature of the clerical revenues.

Having examined theſe particulars with all the reſpect due to the ſanctuary and to its miniſters, we ſhall turn our view to the laws which reſpect property: theſe will be comprized in the ſixth book of this work.

Lib. 6. Every excluſive right which a man poſſeſſes of diſpoſing of a thing, is called *property:* it cannot paſs either for ever, or for a limited time, to another without his free conſent. This conſent is either expreſſed, tacit, or implied. Laws, the guardians of the property of every citizen, prevent violence and theft, by threats of puniſhment; prevent fraud and deceit, by determining the circumſtances that ſhould accompany this conſent in order to render it valid: hence ariſe the ſolemnities required when it is expreſſed, the marks which indicate it when tacit, the conjectures that afford a foundation for ſuppoſing it when implied; hence the legal requiſites ſought for in the perſon who grants it; the different titles whereby he may

either for ever, or for a given time, diſpoſe of it in favor of another; the different rights ariſing from theſe various titles, and the different obligations thence derived; hence the legal diſtinction between pacts and contracts; hence the privileges in favor of minors, and all whom the law conſiders as ſuch; hence the remedies for frauds;* hence the theory of preſcriptions; hence the origin, the reaſon and ſolemnity of teſtaments; hence that of ſucceſſions *ab inteſtato;* hence, in a word, all the expedients diſcovered by the laws to protect the property of each individual from the ſnares of fraud, and all the means employed by them to diſtinguiſh the ſacred rights of property from the ſecret rapine of uſurpation.

Thus have we reduced to a ſingle point of view the motive of the numberleſs laws which now compoſe the civil codes of Europe, and which have wandered widely from their mark by having ſought it with too much minuteneſs. In this part of the legiſlative ſcience we ſhall only propoſe a reduction. By unfolding this ſyſtem, by diveſting it of all extraneous ſuperfluity, by reducing the particular theories of which it is compoſed to a few general principles, we ſhall endeavour to ſhew legiſlators with what eaſe that property might be ſecured by a few laws, which will be always precarious, uncertain, and ill-ſupported, as long as arms, intended to defend it, ſhall continue ſuperior to the power of thoſe, who ſhould have the direction of

* Le leſioni.

of them; as long as the multiplicity of laws, their obſcurity, and the language in which they are written ſhall keep them concealed from the people; as long as the oracles of Themis ſhall have occaſion for interpreters, and as long as there ſhall be wanting a hand diligent and daring, which, after having gathered the few roſes, that are to be found ſcattered among the innumerable thorns of the preſent juriſprudence, may collect into a pile all that remains, as a ſacrifice to the God of juſtice and civil concord.

After having treated of property, we ſhall at length ſet bounds to this work with a ſhort treatiſe on laws relating to *paternal authority* and the good order of families.

Lib. 7. As the well-being of every Body depends on the well-being of its parts, ſo the good order of the State depends on the good order of families. A ſociety cannot ſubſiſt without a governor: on the ſame principle a family, which is but a ſmaller ſociety, has occaſion for a head to direct it. This head is the father, who muſt neceſſarily be inveſted with ſome rights over the individuals compoſing the family, of which, ſince religion, politics, and humanity have combined to oppoſe domeſtic ſlavery, the wife and the children are now become members. We ſhall next inquire what rights the law ſhould grant to the father over the firſt, and what over the ſecond. The wonted bias of mankind to extremes, has occaſioned an infinite oppoſition between antient and modern legiſlations on this point: The antient

legiſlators certainly yielded too much to the father; but can it be doubted that the moderns have alſo taken away too much? The fault lies equally in the prodigality of the former and the parſimony of the latter. The demonſtration of this moſt intereſting truth will ſerve as an exordium to the ſeventh book, in which, after haſtily ſurveying antient and modern legiſlations, we ſhall aſcertain the errors of each with the greateſt impartiality.

We ſhall ſhow that if juſtice, the public intereſt, and morality, were injured by the privileges which the primitive legiſlators yielded to fathers of families; if the throne they ſought to raiſe for the father in the boſom of his family were too independent; if the right of diſpoſing of the life of his children endangered public authority; if the right of expoſing and ſelling them were an outrage to nature, though protected by the laws; if the power given to the huſband over the wife were too extenſive; if it were rather a property than a pre-eminence;* if it were a manifeſt injuſtice that the contract entered into for the propagation of the ſpecies ſhould give to one of the contracting parties a right of diſpoſing of the life of the other; if that were a ſcandalous law of Rome, which in the commencement of the republic gave the huſband a power of killing the wife for having drunk even with moderation of a liquor, the very abuſe of which was not forbidden to the huſband; if the right of divorce, granted by the greater part of the antients

* *Tranſibant in mancipium viri.*—Cicero pro Muren.

antients exclusively to the husband, gave him an unlimited power over the wife, without her being able to obtain a remedy for the abuse of his authority;* if in a word the antient legislators exceeded the limits of right and justice, in their determination of the extent of paternal authority, we shall make it appear that the moderns are not therefore less blameable by whom it has been in so despotic a manner restricted or rather destroyed. It might even be said with truth that public and private tranquillity have been more injured by the defect, than they ever were by the excess of paternal rights. The natural affection of fathers for their children was a great preservative against the unhappy consequences of so extensive an authority; and the very fear it inspired must have rendered the occasions for exercising it extremely rare. Crimes must have been far less frequent in families, when they reflected on the strength, the vicinity, the absoluteness of an hand ever armed for punishment. The extent then of the power and the situation of the person invested with it might restrain its use and prevent its abuse; but what instrument,

* It is true, that among many nations in the progress of time the right of suing for a divorce was extended even to the wife; but the causes which authorised her application, and the obstacles which opposed her success were of such a nature, that they almost prevented the advantages intended by the law. Among the Romans we may be convinced of the innumerable difficulties which precluded the wife from obtaining a divorce, while it was attended with no inconvenience on the part of the husband, it will be sufficient to read *Novell.* 22, *cap.* 15, and *Novell.* 117, *cap.* 8, *cap.* 13, and *cap.* 14. All these subjects will be examined in their proper places.

ſtrument, were paternal authority deſtroyed, could remedy the diſorder of families in which, as hath been obſerved, the ſtate is alſo involved. Where could an authority be found, which like that of fathers might act at all times with the ſame vigour; like that, ſee all and know all; and neither have need of aſſiſtance to inforce a reſpect for its orders, nor of formality in delivering them; which could confide the execution of its decrees to an arm ſo near the mouth of the enactor; which could neither admit of prevention in the judge nor tardineſs in the executioner; which could cauſe its commands as ſoon as given to be known, as ſoon as known executed; which, in a word, (after the law had fixed the juſt limits wherein it ſhould act,) could afford no reaſon for apprehending any uſurpation on the part of him in whom this authority ſhould be veſted?

From theſe reaſons we ſhall deduce the neceſſity of raiſing anew the edifice of paternal authority, which the antient legiſlators had too much aggrandized, and an ill-founded diſtruſt has now almoſt entirely deſtroyed. But on theſe foundations with what materials, on what plan ſhould it be conſtructed? what ſhould be the rights of this new *paternal* magiſtracy? what thoſe of huſbands? how far ſhould their cares extend? what limits ſhould be ſet to their juriſdiction? what might be the uſe of their authority? what the remedies to prevent its abuſe? what influence might this novelty have on the order of ſociety; what on manners? what

obſtacles

obſtacles would be oppoſed to this undertaking by the preſent ſyſtem of ſucceſſions? what by the feudal laws, in thoſe nations, where the ſqualid ſpectre of this antient Coloſſus ſtill exiſts?

Theſe will be the objects of our diſcuſſion in the ſeventh and laſt book; and this is the plan of a work of which I offer two volumes to the public.

Too vaſt and too delicate a ſubject is this to be managed by my hands: I confeſs, it is ſuperior to my ſtrength, my knowledge, my talents; but I am bold to ſay it is inferior to my zeal. Amidſt the errors which will perhaps be found ſcattered herein, amidſt the low ſtile in which the moſt ſublime truths will be delivered, amidſt the infinite defects to be diſcovered; my heart will always appear—which ambition has not contaminated, intereſt has not ſeduced, fear has not debaſed. The public welfare is the only object of this work, and the zeal with which it is written its only ornament. This is the foundation of my hopes: this the title which gives me a true right to fame.

Sages of the earth, philoſophers of every nation, —O all ye to whom the ſacred depoſit of knowledge is intruſted, if ye would live, if ye would that your names ſhould remain engraven in the temple of memory, if ye would that immortality ſhould crown your labours, employ yourſelves on theſe ſubjects, which, over two thouſand leagues of ſpace, and after twenty centuries, continue to be intereſting! Never write for a man, but for mankind: unite your glory with the eternal intereſts of

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the human race: abhor the talents ſo often poſſeſſed by ſlaviſh ſouls that burn a ſervile incenſe on the altar of adulation: fly the timid and venal ſpirit which knows no ſpur but intereſt, no rein but fear: deſpiſe the vain applauſe of the vulgar, and the mercenary gratitude of the great, the threats of perſecution, and the deriſion of ignorance: boldly inſtruct your brethren and freely defend their rights. Then ſhall mankind, intereſted in the hopes of happineſs to which you point the road, hear you with tranſport: then ſhall poſterity, grateful to your labours, in public repoſitories diſtinguiſh your writings: then, neither the impotent rage of tyranny, nor the intereſted clamours of fanaticiſm, nor the ſophiſms of impoſture, nor the cenſures of ignorance, nor the fury of envy, ſhall avail to bring them into diſrepute, or bury them in oblivion: they will paſs from generation to generation with the glory of your name; they will be read, and perhaps waſhed with the tears of thoſe, who would never have otherwiſe known you; and your genius, always uſeful, will be the contemporary of every age, and the citizen of every ſtate.

THE

THE SCIENCE OF LEGISLATION.

BOOK I.

OF THE GENERAL RULES OF THE LEGISLATIVE SCIENCE.

CHAPTER I.

The ſole and univerſal Object of Legiſlation deduced from the Origin of Civil Societies.

WHATEVER might be the ſtate of mankind prior to the formation of civil ſocieties, whatever the æra of theſe unions, whatever their primitive conſtitution, whatever the plan on which they were framed, doubtleſs by one cauſe they were produced, to one principle they owe their birth: the love of *preſervation* and *tranquillity*. I am not ſo extravagant as to conceive that the ſtate of nature, anterior to civil ſocieties, could be ſimilar to that of ſavages, as ſome miſanthropical ſophiſts pretend; nor ſo ignorant of the organization of my own ſpecies or of its diſtinguiſhing characteriſtics, as to believe that man was born to wander in the woods, or that a ſtate of ſociety is a ſtate of violence to his nature.

Far

Far from being miſled by ſo erroneous an opinion, I am bold to affirm, that the author of nature would have acted inconſiſtently towards the moſt auguſt and admirable of his productions, had he not intended man for ſociety. For to what end beſtow on him a reaſon which is matured only by communication and the ſociety of other men? Wherefore to the cry of ſenſation, (which comprehends the whole language of brutes,) add the excluſive gift of ſpeech? why diſtinguiſh him by the ineſtimable advantage of attaching every poſſible idea to certain ſigns of convention neceſſary for tranſmitting his thoughts to others? wherefore deny him that inſtinct which in brutes governs and ſtimulates every action? why cauſe man alone to be determined by the unconſtrained exertions of his own will, and excite this will (to prevent his being deceived in determining on the various objects preſented to his mind) to ſeek an inſtruction which can never be obtained without the aid of aſſociation? why enure him to ſociety by a long infancy? why refuſe to endue all men with the ſame degrees of ſtrength, of induſtry, of genius? why render them diſpoſed to different occupations, and different profeſſions? wherefore inſtill different deſires, wants, and appetites?* why render man ſuſceptible of a multitude of paſſions, which, abſtracted from ſociety,

* The author of nature having deſigned man to live with his equals, has varied his deſires and inclinations to prevent their falling on a ſingle object, ſince ſuch an event would tend to multiply the evils which diſturb ſociety. *Trahit ſua quemque voluptas.*

ſociety, can be of little avail ſince they are by no means calculated for a ſolitary being? why inſpire him with an ambition to conciliate the regard of his brethren, and to gain an aſcendancy over them, or at leaſt over their opinions? why plant in his heart the ſeeds of compaſſion, beneficence, friendſhip, and all thoſe paſſions, which ſpringing from the moral ſenſe of a well-conſtituted mind, oblige him to acknowledge the ſingular want of participating with others his own exiſtence? why, in ſhort, reſtrain not his appetites within the narrow ſphere that confines thoſe of all other beings on the ſurface of the globe, that is, in ſatisfying phyſical neceſſities; which, as they offer themſelves to man only at intervals and particular moments, leave behind them a void, which demonſtrates their inſufficiency to afford us happineſs, and inſtructs us that the ſoul has its wants like the body, wants which it cannot ſatisfy without giving a looſe to ſocial affections.

Theſe few obſervations will, I imagine, ſuffice to prove that ſociety is coeval with man himſelf, and that in the ſavage, wandering amidſt the woods, we behold not man in a natural, but in a degenerate ſtate, man living at enmity with his nature, and inconſiſtently with his deſignation; in few words, the ruin and degradation of the human ſpecies rather than the living image of its infancy.

Thus am *I* the firſt in believing ſociety to have been born with man. But the primitive aſſociation,

tion, of which I am ſpeaking, bore no reſemblance to civil ſociety.

It is not to be imagined that men, though deſigned to live together, ſhould have originally renounced their independence, before they had experienced the want and the expediency of ſuch a ſacrifice. Primitive ſociety then could not have been organized on civil principles. It muſt have been purely natural: a ſociety in which the diſtinctions of noble and plebeian, of maſter and ſervant, were unknown; alike unknown, magiſtrates, laws, puniſhments, and civil burthens:—a ſociety whoſe only inequality aroſe from ſtrength and vigour of body; which acknowledged no law but that of nature, no bonds but thoſe of friendſhip, mutual wants, and the ties of kindred:—a ſociety whoſe members had not yet renounced their natural independence, nor depoſited their power in the hands of one or more individuals, nor entruſted to any the cuſtody of their rights, nor placed under the protection of the laws their life, their property, their honor:—a ſociety in ſhort where every man was ſovereign, becauſe independent; magiſtrate, becauſe guardian and interpreter of the law engraven on his heart; and judge, becauſe arbiter of the diſputes ariſing between himſelf and his aſſociates, and avenger of his own wrongs.

But unhappily for our ſpecies, a ſociety thus conſtituted could not, among men, be of conſiderable duration. It ſeems that nature has conceded to beavers alone the difficult art, or rather

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the pleaſing faculty of combining union with independence. That inequality in ſtrength and vigour of which we have ſpoken, (the only inequality not to be eradicated from theſe primitive ſocieties) with the lapſe of time, and as the paſſions began to unfold themſelves, muſt have produced the greateſt diſorders. Moral equality not being able to ſtand its ground againſt phyſical inequality, muſt neceſſarily have fallen under the weight of ſuperior force. The weaker muſt have been expoſed to the caprices of the ſtronger, as long as the outrages of ſtrength were better ſupported, and more zealouſly defended than the juſt claims of imbecility. The very ſubſiſtence which the labor of the individual had procured muſt have often become an object of rapine for one more powerful than himſelf. His honor, and even his exiſtence were precarious bleſſings, of which he was every inſtant in danger of being deprived, whenever they were expoſed to the attacks of a malevolent ſpirit, united to a body more robuſt than his own. Diſtruſt, uncertainty, fear, muſt have continually interrupted the repoſe of theſe primitive ſocieties. A remedy for this evil was neceſſary, and one only could be found. We have ſeen the impoſſibility of deſtroying phyſical inequality, without ſacrificing moral equality. We have ſeen that to be preſerved, and preſerved in tranquillity, it was expedient to give up independence. We have obſerved the neceſſity of creating a public energy, which might be ſuperior

to every private force, and which could only reſult from the aggregate of private powers. We have ſeen the expediency of creating a moral agent who might repreſent the public will and poſſeſs the collective ſtrength of the people. We have obſerved, in fine, that this public energy ought to be influenced by a principle of public reaſon, which might interpret and expound the law of nature, thereby eſtabliſhing the rights, regulating the duties, and preſcribing the obligations of every individual, not only with relation to ſociety in general, but to the members ſeverally compoſing it;—might eſtabliſh a rule, to which, while the citizen adapted his action, no cauſe of apprehenſion ſhould ariſe;—might create and ſupport regulations, calculated to maintain an equilibrium between the neceſſities of every citizen and the means of ſatisfying them; might finally compenſate the ſacrifice of independence and natural liberty, by the acquiſition of all the inſtruments neceſſary for enſuring the *preſervation* and *tranquillity* of thoſe, who to attain this ſingle object had been deprived of ſo many advantages.

This is the origin and motive of civil ſocieties, and of their laws, and this conſequently is the ſole and univerſal object of legiſlation.

Since therefore the *preſervation* and *tranquillity* of the citizen is the ſole and univerſal object of the legiſlative ſyſtem, let us, before we proceed, examine the ſubjects comprehended under this general principle,

principle, and the conſequences derived from it, that we may thence obſerve in what manner every part of legiſlation ſhould lead to this common end.

CHAPTER II.

Of the Subjects comprehended under the general Principle of Tranquillity and Preſervation, and the Reſult of this Principle.

Preſervation reſpects exiſtence; and *tranquillity* regards ſecurity. To exiſt we muſt have means, and to be tranquil we muſt confide.

The means of exiſtence are reducible to two claſſes—thoſe which relate to the indiſpenſable wants of life, and thoſe which place the citizen in a ſituation of experiencing a certain ſpecies of felicity inſeparable from a certain proportion of eaſe and public convenience. I do not mean by eaſe or public convenience the exorbitant riches of ſome claſſes of citizens, much leſs the ſituation of thoſe who immerſed in indolence may with impunity foſter this vice ſo deſtructive to ſociety. The enormous wealth of ſome citizens, and the indolence of others, imply the infelicity and miſery of the majority. This civil partiality is contrary to the public welfare. A ſtate can only be called rich or happy in a ſingle inſtance: when every citizen by the prudent employment of certain hours can with convenience ſupply his own wants, and

thoſe of his family. Unceaſing labour, a life ſupported with difficulty, can never be a life of happineſs. Such the fables of antiquity repreſent was the hopeleſs condition of the wretched Syſyphus. Not an inſtant was at his diſpoſal, ſince he owed them all to labour.

It is therefore neceſſary that the ſtate ſhould be rich, and that its riches ſhould be well diſtributed: theſe are objects of the principle of preſervation.

But this is not ſufficient. It has been ſaid, that man muſt not only be preſerved, but be preſerved in tranquillity: and to be tranquil it is neceſſary he ſhould confide. He ſhould confide in a government that will not uſurp his right; in a magiſtrate, who, deſtined to be the guardian of the laws, will not abuſe this ſacred depoſit to oppreſs him; and he ſhould confide in his fellow-citizens. He ſhould be aſſured that his peace will not be diſturbed, that his life, protected by the laws, will not be ſacrificed, except in one inſtance—when his crimes have obliged him to reſign the invaluable right of preſerving it;—he ſhould be convinced that property attained by a juſt title, is a property protected by the whole ſtrength of the nation; that additional reſources, acquired without violating the rights of others, are the only ſacred acquiſitions; and that the labour of his hands, as well as its produce, is defended by the public power.

Theſe are the reſults of the univerſal principle of *preſervation* and *tranquillity*. Every part of legiſla-

tion

tion muſt be directed to the procuring one of theſe advantages for ſociety.

Now it is on this account, (as hath been before obſerved in the plan prefixed) that I divide laws into various claſſes, diſtinguiſhing them rather by the effects they ſhould produce, than by the relations they may bear to each other.

But before we particularize theſe laws, before we enter a chaos, where the matter is ſo confuſed, and the objects ſo multifarious as to demand the utmoſt force of method to prevent our being bewildered; it will be right to premiſe ſome general rules, without which the ſcience of legiſlation will ever remain vague and uncertain. This is the object of my firſt book. I ſhall begin by demonſtrating the neceſſity of theſe rules.

CHAPTER III.

Legiſlation, as well as every other Science, ought to have its Rules; and its errors are always the ſevereſt misfortunes that can befall a nation.

A Curve may be deſcribed with greater facility than a right line. Geometry offers us many rules for drawing a perpendicular. Painting, ſculpture, architecture, have their eſtabliſhed proportions, beyond which preciſion is not to be found. Without a rule the right line meant to be deſcribed, would eaſily degenerate into a curve.

Without the aid of a quadrant, you will perhaps draw an oblique line, while you intend a perpendicular. Unaſſiſted by the rules that aſcertain the proportion which the parts ought to bear to each other, and to the whole, often would the painter and ſtatuary form monſters, and as often would the architect be deluded, as well with reſpect to the ſtrength as to the elegance of his buildings.

The nature of man being incompatible with preciſion and arbitrary perfection, every ſcience has occaſion for rules, and is improved in proportion as theſe rules are perfected. Can the ſcience of legiſlation be an exception to a principle ſo conſtant and univerſal?

To aſſert that the rules of legiſlation are founded only on the will of the legiſlator, is the language of deſpotiſm and tyranny: and ignorance alone can induce us to believe, that while revolutions are continually changing the complexion of affairs, and the aſpect of ſociety, the ſcience of legiſlation muſt neceſſarily remain deficient as to fixed, determinate, and immutable principles.

The ſtate, it is true, is a complicated machine, the wheels that compoſe it are not always the ſame, the powers which govern its action are often diſſimilar: but this does not prove that the rules by which we are made acquainted with the operation of theſe different powers, and the various purpoſes to which we ought to direct their influence, may not be ſettled and invariable.

God

God avert, that a ſcience on which ſocial order depends, and in which the conſequences of every error may be more deſtructive to nations than the ſevereſt misfortunes Heaven can inflict, ſhould be vague and uncertain; deprived of eſtabliſhed principles, and deſtitute of rules. The different modes of thinking prevalent among men, the infinite and obſcure combinations of our ideas, (which often originate in principles falſe in themſelves, but dear to all who adopt them) relations, prejudices, and maxims ever varying, unite to offer us indiſputable proofs of the neceſſity of a guide to prevent our being led aſtray on the immenſe and perilous plains of legiſlation.

How many evils might mankind have avoided, had they always been bleſſed with and conſulted this guide! Nothing is more eaſy than to fall into an error of juriſprudence; but is there aught more difficult to be remedied, or attended with more pernicious conſequences? A province loſt, a war unadviſedly undertaken, are evils of the moment. A fortunate occurrence, the victory of a day, may compenſate the defeats of years: but a blunder in politics, an error of legiſlation, may give riſe to preſent diſtreſs, and prepare the miſery of ages to come.

Sparta, ſo often harraſſed by the arms of neighbouring powers, was always ſeen to riſe more formidable from oppreſſion. The celebrated defeat of Cannæ tended only to inſpire the Romans with greater courage; but fatal experience has of-

fered us opportunities too frequent of remarking, that a ſingle edict in matters of finance, proceeding on an erroneous calculation, has rendered barren the moſt fertile countries, and deprived the ſtate of myriads of her citizens; that a ſingle error in juriſprudence has been ſufficient to block up the ports of nations, and divert to other quarters the riches of the ſtate.

What a ſpectacle do the political annals of modern Europe exhibit to our view!

We have ſeen in leſs than two centuries four or five potentates by turns vanquiſhing and vanquiſhed, and hurried in an inſtant from greatneſs to humiliation. If we explore the cauſe of theſe political revolutions, we ſhall trace their origin to the defects of the government. Beginning with Spain, we ſhall obſerve, that this nation, which under Charles V. was the ſource of all the great movements in Europe; this nation, which having been the firſt to raiſe trophies of victory in a new hemiſphere, enjoyed an unrivalled opportunity to unite all the advantages of the moſt fortunate ſituation, and moſt fertile ſoil in Europe, with a dominion over the richeſt countries of America; this nation, which might have given laws to the earth, and have diſcovered within herſelf materials adapted for eternally eſtabliſhing the foundation of her greatneſs: we ſhall find, I ſay, that it is not only to the expulſion of the induſtrious Moors, (an event which was followed by the inſtantaneous and inſupportable increaſe of contributions and taxes;) but

perhaps

perhaps much rather to a falſe principle of economy and the legiſlative errors which this erroneous principle has occaſioned, that Spain owes the loſs of all theſe advantages, and the preſent deplorable ſtate of her agriculture, her induſtry, her population, and her commerce, a ſtate from which ſhe has not been extricated by all the glorious exertions of her preſent adminiſtration. Unenlightened, and by no means citizens of the world, her legiſlators not aware, that without increaſing the opulence of her neighbours ſhe could not preſerve her own; that without diffuſing over the reſt of Europe a portion of her metals, ſhe could not preſerve the reſidue; that by continually augmenting her ſtock of ſpecie, while that of other European nations failed to increaſe in proportion; her agriculture and induſtry depreſſed by the exorbitant price of their products, and unable to ſtand in competition with the agriculture and induſtry of foreign countries, would be driven from the ſtate, and in conſequence draw with them all thoſe treaſures, of which, as we have already obſerved, a portion ſhould have been ſacrificed for the preſervation of the remainder; ignorant that gold and ſilver were gifts of America, which Spain could not retain entirely for her own uſe, but that content with reſerving ſuch a proportion only as would have occaſioned the balance of relative riches to incline to her ſide, ſhe ſhould have reſigned the reſt to her neighbours: unacquainted, I ſay, with this important truth, her legiſlators by laws, particularly

ticularly directed to prevent theſe metals from going out of the ſtate, have ruined the agriculture, population, and induſtry of a country, which by its inſatiate thirſt for gold, is become like an hydropic body, incapable of retaining the fluid in which it had indulged to exceſs.*

Paſſing from Spain to France, we ſhall here alſo diſcover in the legiſlative ſyſtem, the cauſe of the decline of a nation, which, after having been like Spain the ſovereign of Europe, is become like her a victim to the errors of her laws, and the extravagance of her legiſlators. A ſingle edict, dictated by the ſuperſtition and fanaticiſm of an aged prince in the declining years of his life, (which are uſually years of imbecility) and a ſingle error of one of his miniſters, which changed the whole ſyſtem of economical legiſlation, have done more injury to France than ſhe has derived benefit from her forty years of victory, her celebrated warriors, her academies, her great men, as well in literature as in the arts, or from her deſpotic influence in Europe.

The baniſhing from their country a portion of her citizens, whom error had deluded, not only gave a fatal ſtab to her population, but deprived the ſtate, at the ſame time, of treaſures of arts, which theſe unfortunate exiles offered to other nations, who clearly ſaw their intereſt in affording them protection. A preference of

* In the courſe of the work this truth with regard to Spain will be more fully explained, as well as thoſe about to be mentioned with reſpect to France.

of the productions of art to thoſe of nature, a reliance on the hands of her citizens, rather than on the fertility of her country, while it deprived the earth of huſbandmen, in order to procure inventors of faſhion, and manufacturers of ſtuffs, gave France a deceitful and precarious proſperity, which has vaniſhed before the progreſs of European induſtry, and offered to other nations an opportunity of impoveriſhing her, by enriching themſelves. The firſt in taking advantage of this diſcovery was England, to whom France was ſoon obliged to yield the pre-eminence. But this ſame nation,* after having ſo long triumphed on every ſea, in every port, on every ſhore; after having humbled all the potentates of Europe, and extended her influence over the commerce of the two hemiſpheres, is now on the brink of ruin, from the want of a ſagacious legiſlator, who might have inſtructed her, that a parent, whoſe children are not numerous, ought not to lend her offspring to others; that Great-Britain, with ten millions of inhabitants, was not in a ſituation of peopling ſo many colonies; that her population was by no means ſuſceptible of ſuch a ſacrifice; inſtead

* The reader muſt be reminded, that on the appearance of this work, England was engaged in a ruinous war with her American colonies, from which the moſt fatal conſequences were apprehended by the acuteſt politicians. This remark is offered in juſtice to the author, whoſe obſervations on colonizing are extremely judicious, although a fortunate coincidence of favourable events, which no ſagacity could have foreſeen, has precluded ſome of his opinions from being verified, and awhile averted that fate which threatened England with deſtruction. *Tranſlator.*

inſtead of exciting her citizens to abandon their country, the laws ſhould have oppoſed a barrier to their frequent emigrations; that ſhe ſhould have been content with thoſe eſtabliſhments which were abſolutely neceſſary for her commerce; in a word, while influenced by the univerſal mania of reigning in the new world, ſhe ought at leaſt to have recollected, that a man who abandons his country to ſerve it beyond the ſeas, ceaſes not to be a citizen; that oppreſſion is doubly unjuſt when it proceeds from a free people; that moderation is the only ſafeguard of diſtant poſſeſſions; that obliging the colonies to an excluſive commerce with the mother country, was an injuſtice which muſt continually have exaſperated them; to deprive them of the right of being excluſively judged by their own juries, was to diminiſh their confidence in the government; the condemning them to arbitrary contributions was an outrage to their liberty; the taking from them the right of taxing themſelves was to take from them a prerogative, of which an Engliſhman can never be deprived, in whatever part of the world he may be ſettled; a prerogative which is perhaps the ſole ſupport of the liberty of England, a prerogative, to preſerve which her citizens have ſo often ſhed their blood, and even dethroned their kings. In fine, a good legiſlator might have foreſeen that theſe colonies, become rich, would one day ceaſe to have occaſion for their mother country, and conſequently that it was expedient to govern and direct

with

with the utmoſt moderation, a people that would ſoon find their intereſt in independence. Another diſorder might alſo have been prevented. At the helm of the Britiſh government, in theſe latter times, had a *Locke* or a *Penn* preſided, theſe celebrated legiſlators would have ſhewn their country, that the abuſe ſhe has made, and every where continues to make of her credit, by continually increaſing the amount of her national debt, and by multiplying to infinity the circulation of paper repreſenting a money that does not exiſt, muſt as well by the degradation of her ſpecie, as by the exceſs of taxes, enhance in proportion the price of labour, an increaſe which muſt give England a vaſt diſadvantage, in competition with every other nation, and which in the end cannot fail to occaſion the ruin of her induſtry. Theſe ſimple reflections, which a wiſe legiſlation would not certainly have paſſed over, far removed from the eyes of the Engliſh, may cauſe the fall of a kingdom hitherto remarkable for peculiar penetration in all that concerned her intereſt.

Melancholy reflection! nations as well as men, have their moments of imbecility. England declines; ſhe multiplies inſtead of diminiſhing her contributions; ſhe loſes her influence in Europe, from a wiſh of extending it too far in America; of both ſhe may ſoon be deprived; and the ſceptre of Europe, after having paſſed from Spain into France, and from France into England, invited by wiſe laws, ſeems now about to be fixed among

among the Ruſſians:—ſhall it remain there long, and muſt the Europeans then one day receive all their laws from this ſober nation? The code of Catherine affords me more copious ſubjects of thought than the fleet ſhe has ſtationed in the Archipelago.

For attaining thoſe rules, of which we have demonſtrated the neceſſity; for avoiding thoſe errors, of which we have unfolded the melancholy effects, I begin by diſtinguiſhing the *abſolute* goodneſs of laws from their *relative* goodneſs. In the explanation of this double character of perfection, which every law ſhould poſſeſs, are comprized all the general rules of the legiſlative ſcience. The *abſolute* goodneſs of laws will exerciſe my firſt attention.

CHAPTER IV.

Of the abſolute Goodneſs of Laws.

BY the *abſolute goodneſs* of laws, I mean their harmony with thoſe univerſal moral principles which are common to all nations, to all governments, and adapted to all climates. In the law of nature is contained the immutable principles of what is juſt and fit on every occaſion. It muſt be apparent, that from this fertile ſource the legiſlator may derive numberleſs advantages. Of the laws of nature no man can be ignorant. They are not the ambiguous reſults of the maxims of moraliſts, nor do they originate in the fruitleſs meditations

meditations of philoſophers. They are the dictates of that univerſal principle of reaſon, that moral ſenſe of the heart, which the Creator has impreſſed on every individual of our ſpecies, as the living criterion of juſtice and of honour; a reaſon which ſpeaks to all men the ſame language, and preſcribes at all times the ſame laws; which is more antient, ſays Cicero, than cities, than people, than ſenates; which has a voice more powerful than that of the Gods, which is inſeparable from the nature of thinking beings, and muſt ever continue to ſubſiſt in ſpite of the oppoſition of contending paſſions, in ſpite of tyrants who would have drowned its influence in blood; and impoſtors who would have annihilated its powers in ſuperſtition.

The ſavage feels no leſs than a Locke, that the prey killed by another cannot be his; that the produce of a ſoil cultivated by his neighbour cannot belong to him, without the conſent of the proprietor; and that nought but ſelf-defence can give one man a right over the life of another. Thus decides the moral principle, the dictate of nature, the unerring guide of laws.

But have legiſlators always conſulted this guide? Have not its directions been ſometimes neglected, even by thoſe who have made the greateſt parade of moderation? I cannot but compaſſionate the miſeries of humanity, when I obſerve a Plato betraying opinions worthy alone of an ignorant tyrant.

If a ſlave (ſays he) whilſt he is defending himſelf, happen to kill a free man, by whom his life has

has been attacked, let him be puniſhed as a parricide.* Does ſelf-defence then become a crime in the perſon of a ſlave? and what is a ſlave, but a man unfortunately fallen into the hands of another while defending his liberty, his country, his rights? The legiſlations of antiquity, and particularly that of Rome, were in this inſtance ſcandalous. Slaves were even denied the name of men: By the Aquilian law the murderer of a ſlave, and the criminal who had killed a dog or a horſe, were condemned to the ſame puniſhment.†

Political tyrants, are theſe your laws? Unfortunate men, how have your rights diſappeared! If nature had been always conſulted, would your ſpecies have been thus degraded? Had Lycurgus, that admiration of antiquity, read in the ſacred volume of nature, the unalterable doctrine of the preſervation of the ſpecies, would he have condemned all thoſe infants to periſh whoſe misfortune it was to be born with a weak and delicate conſtitution?§ or would he have permitted adultery, if committed at the inſtance of the huſband?‡ Every man, it is true,

* Plato de Rep.

† *Digeſt. lib.* IX. *tit.* II. *leg.* 2. *Ad legem Aquiliam.*

§ *Debilem, & diſtortum amandabant in locum voraginoſum prope Taygetum, quos Apothetas nuncupabant: quaſi nec illi ipſi, nec civitati, qui non eſſet a primordio ad bonum habitum neque ad robur comparatus, expediret vivere.* Plutarch. Life of Lycurgus.

‡ *Nam viro natu grandiori cui florens ætate erat conjux, ſi quem probum et prudentem adoleſcentem carum haberet probaretque, jus erat eam huic jungere, et quum impleta eſſet egregio ſemine, ſibi vindicare partum.* Plutarch. ibid.

true, may give what is his own; but amidſt the aggregate of rights poſſeſſed by mankind, many may be enumerated which are not ſuſceptible of being transferred or ceded: ſuch is the right of exiſtence; ſuch the natural rights accompanying marriage.

Monteſquieu* relates a law of Gundebald, king of Burgundy, by which it is ordained, that the wife or child of a man who had committed any theft, omitting to reveal the crime, ſhould be reduced to a ſtate of ſlavery. He mentions another of Receſſuinthus, which permitted the children of an adultreſs to accuſe her, and put to the torture the family ſlaves.† Now theſe are two laws, which, for the preſervation of morality, deſtroy nature, whence morals originate. Filial love and reſpect are her firſt dictates; and ſo great is the force of natural affection, that it inſpires us with no leſs horror for diſcovering the crime of our parents, than for the crimes themſelves. The voice of nature approves the pleaſure we feel at obſerving their concealment. The law will have them revealed; but nature commands us to ſecreſy. Would it not be folly to compare the energy of the one with the power of the other? The dictates of nature will always prevail over thoſe of force. Laws ought not to deſtroy, they ſhould rather excite ſentiments which oppoſe ſo many barriers to the torrent of crimes.

* Spirit of Laws, *lib.* xxvi, *cap.* 4.

† This law is in the code of the Viſigoths, *lib.* iii, *tit.* 4, § 13.

Shame, for example, is a natural emotion, originating in modeſty, which eſtranges men from crimes. A law that attempted to deſtroy it, would be extremely pernicious. Of this nature was the law of Henry II, which condemned the woman to death who ſhould be delivered of a ſtill-born child, in caſe ſhe had not previouſly revealed her pregnancy to a magiſtrate.

Heaven forbid that I ſhould here wiſh to vindicate the enormous guilt of Medeas, who violating the moſt ſacred laws of nature, render theſe miſerable infants the victims of their exceſſes! I only intreat the reader's attention to the reflections I have to offer.

Are there not exiſting laws which annex a certain degree of infamy to clandeſtine births? character and modeſty concur in promoting this ſalutary ſhame. Is it not then abſurd to expect, that a young woman ſhould declare her crime to a magiſtrate? The intent of this law of Henry was the preſervation of the child: an end which might have been obtained without making uſe of means ſo violent and unnatural. Informing ſome honeſt perſon among her acquaintance of her ſituation, who might have provided for the preſervation of the infant, ſhould have been conſidered ſufficient. Why puniſh a woman for the effects of natural modeſty? why confound with the crime of infanticide the accidental death of the child, occaſioned by the want of ſuccours, which the fear of betraying her error prevented the mother from affording?

Why,

Why, at the ſame moment, deprive the ſtate of two citizens, of the infant that periſhes, and of the mother who might have abundantly ſupplied the loſs with a legitimate propagation? It is an equal exertion of tyranny to require from a young woman the accuſation of her exceſſes, as to condemn a man to die by his own hands. A law of this nature cannot, in the ſmalleſt degree, tend to promote that goodneſs which I call abſolute.*

But

* This law of Henry II. which in ſpite of the advancement of philoſophy, ſtill preſerves its vigour in France, afforded a proper opportunity to the Comteſſe du Barry, a favourite of the late king, to diſplay, perhaps for the firſt time, ſome traits of beneficence in the caſe of a young woman who had been condemned to death, becauſe, being with child by her friend, ſhe had miſcarried of a ſtill-born infant, without having revealed her pregnancy to the magiſtrate. The ſentence of death having been already confirmed by the parliament, and the delinquent being prepared for execution, a black ſoldier, called Mandeville, moved with compaſſion, implored the protection of the favourite, conceiving that this circumſtance ought on no account to ſhock her feelings. The event juſtified his conduct, the Comteſſe du Barry, influenced by the ſoldier's recital, wrote to the Chancellor the following letter; which demonſtrates what effect may be produced by an eloquence ſpringing from the heart:—ſubjoined is a faithful tranſlation.

" Sir, I am not acquainted with your laws, but I know they " are unjuſt and barbarous, contrary to policy, to reaſon, and to " humanity, if they cauſe a young woman to be ſacrificed, who has " miſcarried of a ſtill-born infant, without having previouſly de- " clared her pregnancy. From the memorial which I here incloſe, " you will find this to be the caſe of the petitioner.

" It ſeems ſhe is condemned only for having been ignorant of " the law, or for having tranſgreſſed it, from the operation of a " modeſty the moſt rational. I rely on your equity for a fuller " examination of this affair, but the unhappy woman deſerves " ſome indulgence. I require, at leaſt, a commutation of puniſh-

But let us for a moment conſider, whether theſe univerſal principles of morals may not, in certain caſes, be modified. The reciprocal ſuccour of huſband and wife is the dictate of nature. A law of the Achaians, however, releaſed the huſband of an adultreſs from this obligation. By this law, ſurely the precept of nature was not ſubverted, yet it underwent a modification: and this modification was ſalutary.

Marriage with the Greeks was a contract binding on both parties; but after the act of adultery, the huſband and wife appeared in the eye of the law as two citizens. Its views were entirely political. The legiſlator well knew that manners are the ſupport of a nation. A law of Solon obliged children to maintain their parents, when oppreſſed by poverty; but excepted thoſe who ſprung from a proſtitute, thoſe whoſe chaſtity their father had expoſed

"ment. Your ſenſibility will dictate the reſt. I have the "honor, &c."

Theſe ſentiments of truth, though proceeding from a perſon little accuſtomed to its utterance, who had often cauſed her prince to ſacrifice it at the altar of pleaſure, failed not to make the deepeſt impreſſion on the Chancellor, who, after having the affair re-examined, cauſed the delinquent to be acquitted. It is not however to be ſuppoſed, that the advocate for the girl ſhould have neglected to inſiſt on the ſame truths; but the eloquence of a favourite was better adapted to perſuade the Chancellor than that of an advocate. Now who, after this recital, can refuſe me a ſentiment of compaſſion for the lot of a nation, where the ſecreſy, inſpired by natural modeſty, is puniſhed with death, and where the mere letter of a favourite is ſufficient to revoke a ſentence confirmed by a whole parliament. The puniſhment and the acquittal inſpire me with equal abhorrence.

expoſed by an infamous connection;† and laſtly, thoſe whom he had neglected to inſtruct in ſome art by which they might procure a ſubſiſtence.*

Monteſquieu, in a paſſage§ reflecting on this law of the Athenians, ſays: "in the firſt caſe, the "law conſiders that the father, being uncertain, "had rendered their natural obligations preca-"rious; in the ſecond, that he had ſullied the life "which he had given them, and offered the "greateſt injury poſſible to his children, by de-"priving them of their reputation; and in the "third inſtance, had rendered that life inſup-"portable, which they found it ſo difficult to "preſerve."

All theſe exceptions are but ſo many uſeful modifications of the natural precept of maintaining parents.

Revelation is the next object of the abſolute goodneſs of laws. If to this we owe the developement and modification of the univerſal principles of morals, laws ought neither to permit its alteration or ſubverſion. Such a conduct would be attempting to ſhake an edifice raiſed by a Being who has the moſt eſtabliſhed rights to our obedience. Revelation ſhould rather ſerve us as a guide. The Decalogue alone contains in few pre-

 cepts,

† Petit. Attic Laws, *lib.* vi, *de connubiis. Tit.* v, *de puerorum amoribus, & productione, & ſcortis.*

* See Plutarch's Life of Solon.

§ Spirit of Laws, *lib.* xxiii.

cepts, what ſcarcely a hundred moral codes could comprize;—the duties of man to God, to himſelf, to his brethren, are there lucidly defined. The internal and external worſhip it requires, is at once pure and pious. Superſtition and idolatry are alike proſcribed. The private peace of families, conjugal honor, and public tranquillity, are the neceſſary conſequences. Who can avoid obſerving the utility of ſo perfect a model? If any ray of humanity be diſcoverable amidſt the errors of the preſent juriſprudence of Europe, we owe this bleſſing to the eſtabliſhment of a religion, which by unfolding and explaining the principles of reciprocal affection, and by equalizing at the foot of the altar the conditions of men, has ſet one ſeal more to the liberty of mankind, by proſcribing domeſtic ſlavery. This antient grove, whoſe ſhade had in all ages covered the earth from one pole to the other, ceaſed to overſhadow Europe after the eſtabliſhment of Chriſtianity. We may now reaſonably diſpute with our predeceſſors the firſt poſt by the throne of humanity and reaſon. Neither the Egyptian, the Grecian, nor the Roman juriſprudence, as to this object, can be put in competition with ours. We ſhall not find in the hiſtory of theſe people one legiſlator who reſpected the undefinable rights of human liberty, or adopted the doctrine of its being unalienable. We ſhall not find one who even ſuppoſed that in the code of nature there is no title that can render ſlavery lawful, no price by which it can be purchaſed.

The

The iron logic which gives the conqueror a ſuppoſed right over the life of the conquered, and thence deduces a right ſtill more fallacious, of depriving him of freedom, by compenſating with ſlavery the pretended gift of life, is no longer adopted in modern codes; no longer does the civil law permit the ſale of our own liberty, or that of our children. When wars are terminated, the vanquiſher reſtores to his captives their country, their freedom, and their property.‡ The ſoldier is no longer in dread of ſlavery,—ſtill fewer apprehenſions alarm the citizen.

A wretched infant is not, as in antient Rome, expoſed to the danger of being ſold by a parent, on account of his inability to procure its maintenance.* The laws have now erected aſylums where indigence may ſafely depoſit the fruit of its pleaſures.§ The ſale of perſonal liberty is never valid with us, as it was in certain caſes among the Romans. A citizen is neither authoriſed nor

‡ If this generoſity be not practiſed by the pirates on the coaſt of Africa, the reaſon is, that with them the ſtate of war is perpetual.

* The laws of the XII Tables, which gave parents an unlimited power over their children, conceded alſo a right of ſelling them. See *Gotofred. in fragm. ad LL* 12. *tab. lib.* 1. *tab.* 4. This privilege was afterwards condemned by laws corrective of the antient tables. See the law *Abdicatio C. de pat. poteſt.* But after ſome time, it was enacted, that in caſes of neceſſity theſe ſales were ſtill legal. See the law 2. *C. de Patrib. qui filios, &c.*

§ In Athens another barbarity was committed. A tribunal was there eſtabliſhed for the expreſs purpoſe of examining into the births of the citizens. If any were found illegitimate, that is, not born of a lawful marriage, they were deprived of liberty, and ſold as ſlaves.—See Potter. *Archaeologiæ Græcæ, lib.* 1, *cap.* ix.

obliged to deprive himſelf of his deareſt prerogative. The very laws that reſtrain him from this unnatural contract offer him ſubſiſtence and liberty.† The inſolvent debtor, condemned by the laws of the XII Tables, either to become the ſlave of his creditor, or in caſe of a plurality, to be torn in pieces,* with us needs only to declare the ceſſion of

† The ſale of perſonal liberty was valid among the Romans, when a free man, concealing his condition, cauſed himſelf to be ſold by a fictitious maſter—*venum ſe dari paſſus eſt.* See the law *Liberis* 3, §. *ſi quis minor ff. de liberal. caus.*

* The cruelty of making the inſolvent debtor the ſlave of his creditors, was not ſuggeſted ſolely by the laws of the XII Tables. This inhuman inſtitution prevailed among the greater part of the people of antiquity. The Athenians, according to Plutarch's Life of Solon; and the Germans, according to Tacitus *de morib. Germ.* had adopted it in ſpite of their enthuſiaſm for liberty. But the moſt atrocious act poſſible to be invented by human ferocity, is to be found legalized by the XII Tables alone. *If there be more creditors,* (ſay theſe laws) *let them cut the debtor into pieces. If they cut more or leſs, let it be without fraud. If they are willing, let them ſell him beyond the Tyber. At ſi plures erunt rei* (theſe are the expreſs words of the law) *tertiis nundinis partes ſecanto. Si plus minuſve ſecuerint, ſine fraude eſto. Si volent ultra Tiberim peregre venumdanto.*

Time, that hath hid from us the many excellent regulations which were to be found in theſe laws, has unhappily preſerved this fragment, which is one of the moſt ſhameful monuments of the cruelty of men, and the extravagance of their legiſlators. I am aware, that the celebrated Bynkerſhoek, and other modern lawyers, have given this fragment a conſtruction very different from the literal ſenſe. But I find Quintilian (*Inſtitut. Orat. lib.* 13, *cap.* 6.) and many other antient writers, have taken the remains of this law in its natural conſtruction. I obſerve in Aulus Gellius (*Noct. Attic. lib.* 20, *cap.* 1.) a philoſopher condemning and a lawyer approving the regulation, neither the one nor the other ſuppoſing the leaſt allegory. And I alſo obſerve Tertullian combats it, while he is demonſtrating the imperfection of the Roman laws (*Apologet. cap.* 4.): on account of proximity, the opinion of the antients ought to have the greateſt force.

of his property with a ceremony more ridiculous and indecent than painful, in order to obtain his liberty and his peace.§ Thus has the civil law and the law of nations been refined and improved by religion. Would to God that our legiſlators had always adapted their laws to her principles. Superſtition would not then have defiled our codes with blood. And ſlavery proſcribed from Europe, would not have eſtabliſhed itſelf in America under the protection of the ſame law that had baniſhed it from among us. The barbarous ſhores of Senegal would never have been frequented by Europeans as the market for purchaſing, at a vile price, the inviolable rights of humanity and of reaſon. Avarice daring and inſatiable, would not, unawed by the fear of danger, have ventured amidſt the deſerts, and the tygers of Africa, for the ſake of procuring human victims to appeaſe her thirſt of gain. The Europeans would not ſo often have cauſe to bluſh at beholding ſhips laden with Catos, reſolved to prefer independence to life, and death to ſlavery.

But who could believe, that while Chriſtianity is diffuſing her beneficent influence over Europe; while our laws are declaring themſelves in favour of

§ The ceremony with which the inſolvent debtor, among us, declares the ceſſion of his property, is rather calculated to excite laughter than compaſſion. The debtor is conducted to a column ſet apart for this office, which he embraces while a herald cries *cedo bonis*, and another raiſes his garments, and diſcovers his poſteriors to the ſpectators. This ceremony being ended, the debtor is ſet at liberty.

of the liberty of man; while humanity is collecting her rights from every quarter, European America is covered with ſlaves: legiſlation is not only ſilent on this abuſe, but protects the infamous traffic: and through all the immenſe extent of this vaſt continent, there is but one ſmall region of heroes to be found, that has choſen to ſave itſelf from the remorſe attendant on this injuſtice and from the execrations of poſterity. Pennſylvania alone no longer contains ſlaves.

The advancement of knowledge, united to the virtues of princes, afford us reaſon to hope that her example will be imitated by other nations. Our codes will then be more analogous, both to the principles of nature and revelation; and their triumph over thoſe of the antients will be more deciſive.

I ſurvey theſe ſubjects with extreme rapidity, continually fearful of falling into the error of thoſe writers who are unſeaſonably prolix to demonſtrate truths in which all men are agreed. I ſhould prefer a total ſilence on theſe points, were I not prevented by the nature of the work I have undertaken, and by the laws of method.

Having given a general idea of the *abſolute goodneſs* of laws, I proceed to conſider their *relative goodneſs*.

CHAPTER

CHAPTER V.

Of the Relative Goodneſs of Laws.

THE diverſity obſervable in the human character, genius, and diſpoſition, as well as the inconſtancy of mankind, influences political bodies, as defects in the parts have an influence on the whole. Nations reſemble not nations. Governments differ from governments. It ſeems that nature, ever deſirous of diſplaying her greatneſs in the variety of phyſical productions, has determined to make her wonders equally apparent in the diverſity of moral bodies.

Every government has peculiar ſprings which regulate its motion, which often excite its powers, often leave them in inaction. The manners of one age are never ſimilar to thoſe of the age preceding or ſubſequent. The intereſts of ſtates change with the generation, and an interval of a few years, or a meridian of diſtance ſuffice to render that pernicious at certain times, or in certain ſituations, which, under other circumſtances, was highly ſalutary.

Should laws, then, adapt themſelves to this inconſtancy, this prodigious variation in political bodies? Let us by facts reſolve this moſt intereſting queſtion.

One legiſlator abominates riches; baniſhes from his republic gold and ſilver; prohibits commerce; attempts

attempts to eſtabliſh an equality of conditions, and to preſerve this equality, regulates portions, and directs ſucceſſions: deſtroys all property; orders that lands ſhould belong excluſively to the republic, and that certain portions of them ſhould be diſtributed to fathers of families, and held as uſufructuary poſſeſſions: condemns luxury; introduces a ſpecies of glory and honor amidſt frugality; degrades manufactures; directs that the ground ſhould be cultivated by ſlaves alone, and that a free citizen ſhould follow no occupation but thoſe which have a tendency to render his body robuſt, or to inſtruct him in the art of war.

He immerges his citizens in warlike eaſe, and to obviate its dangerous conſequences, regulates all their actions. Their food, their meals, even their ſubjects of converſation in the public porticos, are ſettled by the law. Dancing, running, wreſtling, and every exerciſe that can ſtrengthen the body, or diſpoſe it to endure the fatigues of war, becomes the object of public ſpectacles, and rouzes the citizen to emulation. He obviates the diſſoluteneſs of the two ſexes by the aid of a remedy apparently calculated to excite it; he orders that the young women ſhould have their faces conſtantly uncovered, and that entirely naked, they ſhould contend with the men in the public exerciſes: influenced by a perſuaſion, that the ſureſt method of preventing the ill effects of ſexual impreſſions is by accuſtoming the ſenſes to a frequent and undiſguiſed obſervation of Nature.

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The event juſtifies his whole ſyſtem; his republic becomes the admiration of the univerſe, and during ſix centuries preſerves its felicity and its power.

The legiſlator of another republic, ſeparated from the firſt by a few leagues of diſtance; adopts a mode of thinking entirely oppoſite. His laws protect commerce, animate the arts, encourage agriculture, promote labour, and invite opulence from every quarter. Conſcious of the ſterility of his country, he has recourſe to induſtry.

He orders that every citizen ſhould exerciſe ſome trade; releaſes the ſon from his obligation of maintaining a father who had neglected to inſtruct him in any art whence he might derive ſubſiſtence; and reſigns to an aſſembly of the moſt reſpectable citizens the care of examining by what means each individual of the public procures his maintenance.

He directs that all ſhould be employed, that no particular trade however ſhould be preſcribed, but that the choice ſhould depend entirely on the unbiaſſed judgement of the individual, and beſtows the rank and privileges of citizen on foreign artiſts who with their families come to eſtabliſh themſelves in the city to exerciſe their trades: in this republic neceſſity, law, and every circumſtance conſpire to favour the arts. Indolence is puniſhed as a crime; the law obliges even the women to be laborious and ſedentary. Thus by the mere force of induſtry does the legiſlator expect to prevent corruption of manners, and preſerve the honor of the two ſexes, amidſt the riches he ſeeks to collect, and the luxury

which

which muſt be the unavoidable conſequence of their introduction. His republic becomes by means of theſe laws happy, rich, and powerful: and if it cannot, like the firſt, preſerve its laws for ſix centuries, it has in compenſation the ſingular glory of ſurviving her liberty.

Of theſe two legiſlations, which is the moſt excellent? I anſwer that Sparta could not have enjoyed a better than that of Lycurgus, nor Athens than that of Solon. Similar effects were produced in each, notwithſtanding the contrariety and diverſity of cauſes. Each was well adapted to the ſituation of the republic for whoſe uſe it was promulged; and this aptitude, this *harmony between the laws and the ſtate of the nation receiving them*, I call *relative goodneſs*.

CHAPTER VI.

Of the Decline of Codes.

IF that legiſlation be the moſt excellent which is beſt adapted to the ſtate of the nation for whoſe uſe it is promulged; if in this ſtrict connection all the relative goodneſs of laws conſiſt; if two legiſlations entirely oppoſite to each other, may both be uſeful for different nations; if the ſtate of the ſame nation change with the alteration of the circumſtances; if a country may paſs from

miſery

miſery to opulence, and from opulence to miſery; if a province loſt or gained may alter the aſpect of the national intereſt; and if every inconſiderable variation in the form of government may produce a change in the character of the people; who can doubt, that the moſt excellent legiſlation in the world may become the worſt, and that meaſures the moſt ſalutary at one moment, may become the moſt pernicious at another? To the hiſtory of Rome, and of her laws, we may have recourſe for proof.

Rome, born to periſh in the very dawn of her exiſtence; Rome, alike incapable of ſupporting the chains of deſpotiſm, and of enjoying in tranquillity the bleſſing of freedom;* Rome, that had ſcarcely baniſhed the Tarquins before ſhe became a prey to civil diſcord; expoſed to all the dangers of anarchy, and haraſſed by perpetual contentions between thoſe irreconcileable parties, the nobles and plebeians; Rome, I ſay, was obliged to involve herſelf in war, that ſhe might not periſh; was obliged to excite tumults without, that ſhe might preſerve peace within her walls.

Her ſage legiſlators, aware of its neceſſity, conſtructed on this plan the whole ſyſtem of their legiſlation.

Conqueſt was the great object of their laws: and their form of government was the only one at that period conſiſtent with the Roman ſpirit. In war they

* *Nec totam libertatem, nec totam ſervitutem pati poſſunt.* Tacitus.

they ſought to combine the intereſt of every citizen and every department in the ſtate. Among the ſoldiers the booty was diſtributed: to the citizens who remained at home a portion of corn was reſerved as a tribute to be paid by the ſubjugated nations. The great ſource of rewards and honors was alſo compreſſed. Crowns, thoſe inſignia of the divinity, the prieſthood, and the empire, in Rome were ſet apart for victory, for valor, and for conqueſt. It is well known how various they were, and it is alſo known that the leaſt eſteemed was that of laurel beſtowed on thoſe who had been engaged in treaty, or in the ſettlement of a peace with the enemy.* In the diſtribution of this reward, the ſpirit of the legiſlation is admirably preſerved. The ſettling a peace was an action to which the law annexed the moſt inconſiderable reward, becauſe it was an object the leaſt to be deſired.

It ſoon became neceſſary to make war the intereſt of the conſuls. It was therefore eſtabliſhed that they ſhould not be enabled to obtain the honors of a triumph, until they had atchieved a conqueſt or a victory.

In ſhort, the prieſthood itſelf, equally rapacious in Rome as in every other country where fanaticiſm has

* The triumphal crown was alſo of laurel, but was given only to the General who had gained a battle, or conquered a province. This crown was the moſt honourable, perhaps the more highly to diſtinguiſh it from the laurel crown beſtowed on thoſe who had been employed in treaty with the enemy, a duty by no means deſireable. The conſul Claudius Pulcher, in the year of Rome 569, introduced the practice of gilding the circle of the crown.

has taken place of religion, found its intereſt in war. As the Gods of the ſubjugated nations were adored in the capitol; as the Romans imagined they ſhould compenſate the outrages which they had committed on theſe nations, by introducing the religious rites of their protecting deities; the prieſthood beheld gods, temples, and offerings, its three moſt fertile ſources of wealth, multiplied with increaſing conqueſts.

Thoſe who obeyed, and thoſe who commanded; they who wielded the ſword, and they who offered incenſe to the deities, turned their views alike to war, as to the foundation of their hopes. This ſublime combination, this wonderful unity of intereſt among all ranks of citizens, failed not abroad to ſpread wide the flame of war, while at home the people were preſerved in tranquility, their thoughts being employed and diverted by conqueſt: but the natural tendency of ſucceſs muſt at laſt have left the Romans in the ſingular predicament of having no more enemies to combat. At this point they in fact arrived, and their legiſlation, which till that moment had been admirably calculated for enſuring their domeſtic peace and liberty under the auſpices of war, deprived of this inſtrument, became incompatible with the novel ſituation of a republic, which, immerſed in civil diſcords no longer to be prevented by the legiſlature, loſt amidſt the ferments of anarchy, all its antient freedom.

The beſt codes may have their viciſſitudes.* Laws that once produced opulence and power, may be of no efficacy to preſerve a nation under circumſtances like theſe. We have an example in the legiſlation of Rome. We may obſerve the ſame phænomenon in the juriſprudence of many modern nations, as will be remarked in the courſe of this work. We need only at preſent attend to this diſtinction, that ſometimes the defect is in the parts, ſometimes in the whole. Thus a mere correction of the antient legiſlature will often be ſufficient, but it will ſometimes be neceſſary to change it entirely. The firſt of theſe expedients is eaſily adopted, but how formidable are the obſtacles that oppoſe the ſecond!

CHAPTER VII.

Obſtacles to be encountered in changing the Legiſlation of a People, and the Means to obviate them.

IF legiſlation act while it perſuades; if the wiſhes of the public on legal ſubjects be not indifferent; if the vigour of laws be inſeparable from

* With this truth no one was better acquainted than Locke, ſo well was he perſuaded of its influence, that when deſtined to become the legiſlator of Carolina, he directed that in a hundred years his legiſlation ſhould be altered. Such are the opinions of philoſophical lawgivers.

The legiſlative aſſembly of France have alſo eſtabliſhed certain periods for the reviſion of their national code.——*T.*

from that conviction of ſpirit which prompts a free, pleaſing, and general obedience; if neceſſity be not in all caſes ſufficient to authorize novelties, which ſhould be dictated by, or at leaſt be congenial with the general will; if framing edicts without conſulting the wiſhes of the people, and without conciliating their good opinion, be an error which alienates all hearts, and cauſes every meaſure, even the moſt juſt and honorable, to be ſuſpected; if the attainment of this public approbation be an undertaking peculiarly arduous, its ſucceſs being impeded by the ſuſpicions of ignorance, the clamorous oppoſition of private intereſt, noiſy and more ſeducing than the voice of the public weal; the conſpiracies of envy, the blind veneration of the vulgar for every thing antient, and their provoking contempt for all that is modern, even for the good done under their own eyes: ſurely reflections like theſe muſt convince us, that we have no inconſiderable obſtacles to conquer, when the overthrow of an antient legiſlation and the ſubſtitution of laws better adapted to the preſent ſtate of the nation about to receive them, become the objects of our political labours.

Reflections ſo very intereſting, approved by reaſon and experience, lead me to propoſe ſome remedies which may diſſipate, or at leaſt weaken the reſiſtance of theſe obſtacles.

The firſt ſtep neceſſary is to render the public deſirous of reformation, an object for which their minds muſt be prepared. This preparation can-

not be inſtantaneous. It muſt reſult from the citizens being apprized of the inefficacy of old laws, which may be accompliſhed by attributing to the legiſlation the cauſe of every diſorder, and is one of thoſe caſes in which recourſe muſt be had to genius. Then will the writings of authors, directed by adminiſtration, prepare the way for a new ſyſtem of laws, by unveiling to the public the errors of antient legiſlations, the evils which are the conſequence, and the neceſſity of their abolition. Then, in ſhort, the voice of inſtruction will aſſiſt the intentions of government, and vanquiſh that moſt formidable obſtacle to reformation the blind prepoſſeſſion of the multitude in favour of antient laws.

In the preſent ſtate of affairs, this preparatory ſtep has been already taken. The beſt writers have been employed to diſſipate public ignorance. The imperfect ſtate of legiſlation in the greater part of Europe has been depicted in the moſt vivid colours. Our legiſlation deduced from the laws of a people originally free, but afterwards immerſed in ſlavery, compiled by a perverſe lawyer under a weak emperor, united with an immenſe number of particular edicts which contradict, and forenſic deciſions by which its dictates are eluded, mingled with coarſe uſages which ſprang from the caprices of that ignorance and ſtupidity ſo univerſally prevalent during the night of feudal anarchy, and utterly incompatible with the changes at preſent obſervable in all ranks: Our legiſlation, I ſay, being

compoſed

compoſed of ſuch heterogeneous materials, may without difficulty be brought into diſrepute. In fact, it is ſo fallen in the public eſtimation, that if we except the prieſthood, deſtined to protect and conſult this myſterious book of the Sibyl, there is not a citizen but wiſhes a reformation in our codes.

Having proceeded to this point, another ſtep muſt be taken. It is not enough to perſuade them that the antient laws are inefficacious, we muſt prepoſſeſs the people in favour of the new code. In order to accompliſh this neceſſary prepoſſeſſion, the arguments uſed ſhould be forcible, and perfectly coincident with the general opinion. For example, inducing the citizens to believe that this great work was entruſted to an individual, would be a conduct extremely erroneous. But the frequent aſſembling of men in high eſteem with the multitude, would ſet bounds to the torrent of envy, and at the ſame time increaſe a confidence, a reſpect, and an attachment to the new legiſlative ſyſtem. To theſe expedients have all governments, and all nations in every age, directed their attention.

In Athens no new law could be propoſed without the approbation of the ſenate. Prior to their approval, it was read to the popular aſſembly, and a copy affixed to the ſtatues of the ten heroes, ſo that all might be enabled to read and examine its tendency. During this period every private citizen was authorized in offering to the ſenate his reflections on the ſubject. At another aſſembly it was

again read to the people, who finding it plauſible, joined with the council of *prytanes*, preſiding on that day, to elect the *nomothetæ*, or legiſlators, who were finally to decide whether the new law ought to be put in force.† The *nomothetæ* were only eligible out of thoſe judges who had taken the *eliaſtic* oath, in whom, as is well known, the people had an unlimited confidence.* Thus in Athens, to frame every new law, the ſenate, the people, and the moſt experienced lawyers, united their exertions. This eſtabliſhment has been imitated by the Venetians. Before any new law is propoſed, it muſt be ſettled by the Doge and counſellors, and after remaining eight days expoſed to public obſervation, muſt be lain before the grand aſſembly of nobles; whereas in a republic purely ariſtocratic, the mere approbation of the laſt would be ſufficient to give effect to any law. But the counſellors are in Venice what the *nomothetæ* were in Athens, perſons in a high degree enjoying the good opinion of the vulgar, who never entertained an idea of diſputing what they had approved.§

If

† See Petit's Attic Laws, *de Legib. lib.* 1, *tit.* 1. *legum recenſio.*

* See Pollux, lib. viii, cap. x. Stephanus Byzantin. on the word ἡλιαία. See alſo the remarks of *Petit* on the oath taken by the judges in Athens, particularly what relates to the *eliaſtic* oath. It was ſo called becauſe thoſe who had taken it, when they were to exerciſe the duties of their office, aſſembled in a place open to the ſkies and expoſed to the ſun.

§ The wittenagemote of the Anglo-Saxons reſembled the aſſembly of counſellors at Venice. It was a kind of ſenate in which were previouſly examined the laws about to be propoſed to the nation at large.

If we reflect on the political hiſtory of nations, we ſhall find that the wiſeſt legiſlators have invariably availed themſelves of certain myſterious ſolemnities to conciliate the reſpect of the populace. Homer tells us that Minos went every nine years into the cave of Jupiter, where, as he pretended, this divinity inſpired him with the laws which he afterwards promulged to the Cretans.* Zamolxis in Thrace,† and Zaleucus in Locris,§ in like manner made heaven the ſupport of their laws.

Lycurgus alſo, convinced that it was neceſſary to take advantage of the ignorance and ſuperſtition of the vulgar to gain their opinion, aſcribed his laws to Apollo.‡ The names of the god Conſus and the nymph Egeria, whom Romulus and Numa Pompilius pretended to have been the inſpirers of their laws, are alſo celebrated in the hiſtory of Rome.

There is a difference between a riſing and an eſtabliſhed nation. Romulus and Numa knew by what coin they could purchaſe reſpect from an infant people, which their ſucceſſors knew how to change when they had occaſion to gain a ſimilar object from the ſame people in a ſtate of maturity. And in truth it was enacted among the Romans in the moſt enlightened times, that neither the conſuls,

* For this reaſon Homer calls him Ενιαυσιος διος μεγαλης βαριλης. *O Novennalis Legiſlator ſupremi Numinis.* Plat. in Min.

† Herodotus. *Lib.* 4, *N.* 94 & 95.

§ Ælian. *Var. Hiſtor. lib.* 2, *c.* xxxvii, and *lib.* 13.

‡ Plut. Life of Lycurgus.

the tribunes of the people, nor any of the ſuperior magiſtrates ſhould propoſe a new law in the comitia without having firſt conſulted the moſt able lawyers of the age.* This perhaps was one cauſe of the reſpect which the Romans entertained for their legiſlature; ſo that I have only imitated the conduct of theſe ſage lawgivers in demonſtrating the importance of inducing the vulgar to believe that perſons in the greateſt eſteem with the multitude are employed in framing the new legiſlation. In a northern empire, in a nation that now ſupports a conſiderable character on the theatre of the univerſe, theſe hints will poſſeſs no novelty. Catherine, when ſhe undertook her new code, an undertaking ſtill more ſublime than giving laws to a neighbouring power, which knew not that treaſures and ſlaves form too weak a barrier againſt genius and valor; when ſhe undertook this code, I ſay, Catherine called from every quarter of the ſtate men the beſt qualified for ſuch an enterprize. She did more—ſhe left to her ſubjects the choice of their legiſlator.§

My ſons, ſaid ſhe to the deputies of all the cities in her vaſt empire; my ſons, diſcuſs with me the intereſts of the nation: let the hand of liberty be directed to weigh the fate of a whole people in the balance of juſtice; let all the members of the ſtate have a ſhare in the advantages preparing for them: let us unite in forming a body of laws which may firmly

* Gravina *de Origine Juris Civilis, lib.* i, *cap.* xxix.

§ Every city ſent its own deputies, each of whom had a part in forming the new code.

firmly eſtabliſh the public felicity, and ſettle for ever the fate of your fellow-citizens.

With theſe happy auſpices, with exordiums like theſe, admirably adapted to perſuade and prevail on the multitude, can it be poſſible that her laws ſhould not meet the acclamations and the wiſhes of her people? Is there a ſingle citizen who can doubt the utility of the new code, or heſitate a moment in preferring it to the old?

If you fulfil their expectations, auguſt legiſlatrix of Ruſſia, you will promote the happineſs of the antient country of the Scythians, and prepare by your example the general happineſs of Europe.

The laſt, and perhaps the moſt efficacious method of inſuring the good opinion of the multitude, is to place in a conſpicuous point of view thoſe laws which tend to prevent diſorders familiar to their obſervation, and moſt deeply lamented by the lower ranks.

This expedient was well known to a philoſophic prince, who in theſe latter times has rendered his name equally glorious in the palaces of princes and the cabinets of pacific philoſophers.* To other ſalutary regulations comprized in his new code, he added a law for preventing the length of litigations, an evil which oppreſſes the greater part of European nations, and which is univerſally deplored. In the dominions of this prince, the duration of a ſuit paſſing through three courts cannot exceed two years. With us a ſingle eſtabliſhment of this kind would

* Frederick, late King of Pruſſia.

would be ſufficient, as was the caſe in Pruſſia, to prepoſſeſs the minds of the people in favour of the new legiſlation. Finding themſelves eaſed of a burthen which they had with ſo much difficulty ſupported, the people cannot but bleſs the hand by which they are releaſed. They will feel an attachment to the new legiſlation, and ceaſe to prefer the antient ſyſtem.

Such are the precautions which political prudence dictates for preventing the diſorders to be apprehended from a change in the national legiſlation. Let us now conſider whether there be not alſo ſome mode of retarding the decline of codes.

CHAPTER VIII.

The Neceſſity of a Cenſor of Laws, and the Duties of this new Magiſtracy.

THE decline of codes is a political revolution, ſlow and almoſt imperceptible in its progreſs, requiring ages to arrive at completion. It is not inſtantaneous, nor can be ſo except in a ſingle inſtance when a nation paſſes in a moment from one form of government to another. Now this can very rarely happen, unleſs there ſhould appear at the ſame period, and in the ſame country, a Tarquin, a Lucretia, a Brutus, and a whole people enamoured of liberty and diſſatisfied with their form

form of government. Leaving a caſe ſo ſingular out of the queſtion, legiſlation muſt be gradual in its decay, and may therefore be repaired. An object ſo highly intereſting and ſo much neglected by government, induces me here to demonſtrate the neceſſity of a cenſor of laws. This magiſtracy formed of the wiſeſt and moſt enlightened citizens in the ſtate, might eſſentially contribute to the perpetuity of legal order. Does a law begin to be inimical to the manners, genius, religion, opulence, and well being of the ſtate? the cenſor, deſtined to preſerve and perpetuate theſe relations, will ſoon demonſtrate the neceſſity of a reformation. Every ſyſtem of laws, how admirable ſoever in its conſtitution, muſt have defects and vices. Theſe are inſeparable companions of human productions. Time proves, but time can neither diſſipate nor deſtroy them. Governments are generally the laſt in obſerving theſe defects. Diſtracted with other occupations they are not, nor can ever be apprized, till late, of the errors of juriſprudence. In the mean time the people ſuffer; and while philoſophers are declaiming, legiſlation with hurried ſteps haſtens to deſtruction.

A cenſor of laws would diſſipate all theſe diſorders. Conſtantly devoted to their preſervation, well acquainted with the ſtate of the nation, diligent in exploring the cauſe of every irregularity, he would be the firſt to obſerve any errors in the laws. The evil and its origin being known, the remedy is always more eaſily diſcovered and more readily applied.

applied.‡—Let us awhile recur to the hiſtory of a people whoſe laws, unſhaken by the attacks of time and philoſophy, ſtill retain their influence in the greater part of Europe: let us recur to the Roman nation. The Romans had a cenſor of manners, and they ſhould alſo have had a cenſor of laws. Their legiſlation, which before the arrival of a certain period was admirable as a whole, continued invariably defective in its parts. Theſe defects were never remedied, ſo that the laws were often contradictory to the manners and ſtate of the nation. The ſumptuary laws, for example, which ſubſiſted in the time of Cæſar, might have been proper for the Romans in the ſecond and third age,* yet they formed a part of the national code, when fifty thouſand drachmas were ſcarcely ſufficient to defray the expences of a ſupper given to Cicero and Pompey by Lucullus, whom they had caſually viſited. Amidſt the parade of a multitude of ſlaves that formed the daily retinue of Roman citizens, the law required a frugality, deſpiſed by the Romans, and incompatible with the national opulence. A cenſor would certainly have ſeen the neceſſity of aboliſhing theſe laws and enacting others better ſuited to the ſtate of the people.

The laſt advantage accruing from this office would be a remedy againſt the multiplicity of laws. Can

‡ Let it be underſtood, that the magiſtracy I propoſe muſt be merely *conſultive*, otherwiſe it would be injurious to the principal prerogative of the legiſlative power.

* The laws *Orchia*, *Fannia*, *Didia*, *Lucinia*.

Can a legiſlator, when he frames a new law, have in his eye every particular caſe which it ought to comprehend? We may nevertheleſs be aſſured that one of theſe caſes overlooked, renders the law imperfect. Politics have not yet found a remedy for this diſorder. And when we conſider the preſent ſyſtem of European governments, we ſhall be perſuaded that the diſcovery is ſtill remote.

If a diſorder begin to be felt in the ſlighteſt degree, a new law is framed, merely directed to the exigency of a particular caſe; which by a few words more or leſs, might have been eaſily comprehended under ſome former law. But it is the fate of legiſlation to be always hurrying forward without reflection. Hence have ariſen thoſe countleſs multitudes of laws which oppreſs the tribunals of Europe, and render the ſtudy of juriſprudence ſimilar to that of the characters of the Chineſe, which, after twenty years attention, they are ſcarcely qualified to read.*

To the other duties of a cenſor may be added the care of ſupplying the defects of laws, without increaſing their number, by rendering them applicable to ſuch caſes as were unforeſeen by the legiſlator. By theſe means the conſtituent parts of legiſlation being continually repaired, reformed, and ſupplied, would acquire a certain degree of ſtability

* Theſe truths will be found clearly explained in a ſmall work, written by the author ſome years ſince, intituled, *Reflessioni Politiche ſu l'ultima Legge del Re che riguarda la riforma nell' amministrazione della Giuſtizia.*

ſtability and perfection, fitted to preſerve it from the inſults of time, and the eternal viciſſitudes which agitate political bodies, and continually change the aſpect of ſociety; we ſhould then no longer obſerve ſo many laws of exception for one of principle, ſo many explanatory for one fundamental ſtatute, or ſo many new laws contradicting old ones: by theſe means, in ſhort, legal codes, which are now books of intricacy and confuſion, would become the monuments of good order, and an aggregate of many uniform principles linked together and directed to a common object.

The Athenians were convinced that a magiſtracy was neceſſary to keep a conſtant watch over their legiſlation. This we know was the principal office of the *theſmothetæ*. It was their duty continually to reviſe the legiſlation, and to examine whether any contradictions were obſervable; whether many laws were directed to the ſame object, or any ambiguity appeared in the language:—in a word, it was their province annually to apprize the people of any corrections, which they conceived neceſſary to be made in the body of laws.* Beſides the particular inſpection of this magiſtracy, every year on the eleventh day of the firſt *prytania*, all the laws were read anew to the people, and it remained for the aſſembly to conſider whether it were adviſeable or not to correct, reform, or make any addition.

* Eſchines in Cteſiphontem,—and Potter Archæologia Græcæ, lib. 1, cap. xxvi.

addition. If the legiſlation were found in any inſtance defective, the examination of the ſubject was referred to the laſt meeting of the ſame *prytania*. During this interval the *nomothetæ* were employed in conſidering the object in queſtion, that they might declare their ſentiments to the people; who regulated their deliberations on theſe reports.†— By ſimilar precautions might the decline of codes be prevented.

CHAPTER IX.

Of the Relative Goodneſs of Laws, conſidered with Reſpect to the Objects which conſtitute this Relation.

HAVING thus expounded the general principle of the relative goodneſs of laws; having from this principle deduced the cauſes of the viciſſitudes of codes; having been ſedulous in elucidating uſeful truths, which could not be ſafely neglected; I haſten to unfold with the utmoſt brevity poſſible, the objects which conſtitute this relation and the principles and rules which form the reſult.

It has been obſerved that the goodneſs of laws conſiſts in their being adapted to the ſtate of the nation for which they are enacted. Now this ſtate is

† See Petit's Treatiſe on *Attic Laws*. *Lib.* 1, *de legibus tit. legum recenſio.*——This was an eſtabliſhment of Solon.

is determined by various circumſtances: among which the firſt to be conſidered is the nature of the government. Let us therefore examine in what manner legiſlation muſt adapt its rules to this firſt object of the relation of laws.

CHAPTER X.

Firſt Object of this Relation—the Nature of the Government.

THE kinds of government are various. I do not undertake to enumerate or define them, ſince the idea, which men the leaſt enlightened entertain of their conſtitution, ſufficiently elucidates the principles on which they are formed. Every one is aware of the diſtinction between a popular government and an ariſtocracy. And no one can be ignorant of the infinite diſparity between a republic and a monarchy.

From this difference in their eſſence, we may conclude, that laws proper for one of theſe governments can by no means be calculated for another. For example, the people in democracies are at ſome moments ſovereigns, at others ſubjects.*

They

* The indiviſible nature of truth obliges me here to follow ſome of thoſe principles relating to republics, which have been adopted by Monteſquieu, and were eſtabliſhed before his time by many other politicians.

They make laws, create magiſtrates, elect judges: Having exerted this power, they are immediately bound by the laws they have framed, and in ſpite of themſelves muſt be condemned or abſolved by the magiſtrates and judges whom they have created. Laws then calculated to direct a republic on points like theſe, would be entirely uſeleſs in ariſtocracies and monarchies, where the people are only ſubjects.

As in republics the ſupreme power is veſted in the nation at large; as the ſovereignty, which in other ſtates is confined to the walls of a palace, is in democracies repreſented only in the public portico; as, in ſhort, where the people exerciſe the ſupreme power, a citizen is nothing in his individual capacity, but every thing when united with others; we may eaſily conclude, that the firſt object of laws in theſe governments will be to regulate the aſſemblies, and aſcertain the number and qualifications of the citizens by whom they muſt be conſtituted: the neglect of this arrangement among the Romans, was the fertile ſource of innumerable diſorders.

In monarchies and ariſtocracies the rank of citizen is merely an object of convenience; but in democracies it is a part of the ſovereignty. In the two firſt, a perſon inveſted with this privilege can only participate certain advantages reſulting from his ſituation; but, in the laſt he may be a factious intruder mingling with the popular aſſembly for the purpoſe of raiſing a hand, of offering a vote on which the ruin of the republic may de-

pend. In popular governments, therefore, the law muſt be more vigilant to obviate theſe dangers, more cautious in conceding the rank of citizen, more ſevere in puniſhing all who may fraudulently inſinuate themſelves into this reſpectable claſs.†

To determine in what manner the ſuffrages ſhould be given is another principal point in theſe governments. Suffrages offered in public are always leſs corrupt: in publick, the ſubject of deliberation is properly diſcuſſed: the lower ranks are regulated by the principal citizens; and being kept within bounds by the dignity of their ſuperiors, are the better prevented from betraying truth and their country.

Cicero with reaſon lamented the eſtabliſhment of

† In Athens, the rank of citizen could not be granted but by the whole people, and then remained to be ratified by a ſecond aſſembly, at which it was neceſſary that at leaſt ſix thouſand citizens ſhould be preſent: (*Demoſt. Orat. in Neæram*). It was not enough, to entitle a perſon to the rank of citizen, that he was born in the republic. It was neceſſary that at leaſt one of his parents ſhould be a citizen, and that both ſhould be free. The rank of citizen might be acquired alſo by adoption, when the father by adoption was himſelf a citizen. It is well known how religiouſly the Ληξιαρχικον γραμματειον, or book which contained the names of the citizens, was preſerved and reviſed by the Præfect of every quarter. It is alſo known how dreadful that accuſation ſeemed to the Athenians, called της ξενιας, *of being an alien*, which was incurred by thoſe who had arrogated the rights of a citizen. If the accuſation were clearly proved, the perſon convicted was ranked in the claſs of ſlaves, and as ſuch ſold: See *Pollux, lib.* viii, and Potter *Archæologiæ Græcæ, lib.* 1, *cap.* ix. Sigonius tells us, that the principal duty of the magiſtrates called ὑβριστοδικαι, was to inform themſelves monthly of the names of the children of ſtrangers, to prevent their being included in the public Tables.—See Petit's *Attic Laws, lib.* 1, *de legibus tit.* iii, *de civibus aboriginibus & adſcititiis.*

of a contrary practice in the comitia at Rome, where a large portion of citizens under the protection of a ſecrecy which preſerved them from merited cenſure, ſcrupled not to commit the moſt flagrant injuſtice.* How few, to the diſgrace of humanity, are there who can bluſh in ſecret at their failings. Often without the ſlighteſt emotion of ſhame is that written, which could not without the moſt overwhelming confuſion, have been uttered. Secret ſuffrages in a republic indicate deſpotic influence, for where truth cannot be ſpoken without diſguiſe, it is apparent that virtue is timid; that intrigue and cabal have a ſeat in the aſſembly; in ſhort, it is apparent that the concealed yet tyrannical hand of power cloſes the mouth of liberty, and ſtifles the accents of patriotiſm.

Having regulated ſuffrages, the laws ſhould next divide the people into diſtinct claſſes, an arrangement which always occupied the attention of legiſlators, which contributed to the greatneſs of Athens,† and which ever, in a conſiderable degree, influenced the ſtability and good order of democracies. In what manner and by whom the laws are to be propoſed for the approbation of the people; what requiſites ſhould qualify a citizen for addreſſing the popular aſſembly; the ſubjects to which his diſcourſe ſhould be directed; the expedients proper to counteract the ſeducing lan-

 guage

* Cicero, lib. 1. c. iii, *de legib.*

† Dionyſ. Halicarnaſſ. Eulogy of Iſocrates.

guage of a ſuſpected or corrupt orator; the mode of combining liberty of ſpeech with the good order of the aſſemblies;—ſhould all be accurately defined.* A remedy ſhould alſo be oppoſed to the tardineſs inſeparable from popular governments: a tardineſs often ſalutary, but which in circumſtances that demand inſtantaneous reſolution, may occaſion the ruin of the republic; which in Sparta rendered it neceſſary to create kings, in Athens archons, in Rome dictators.

The people, no leſs than monarchs, require the advice of a council or ſenate; they have need of generals, of magiſtrates, and judges: and ſince theſe muſt be elected, the law ſhould ſettle the mode of making this election, diſtinguiſhing employments which ought to be beſtowed *by choice*, from thoſe which it might be proper to diſtribute *by lot*. In popular governments it is adviſeable to inſpire every citizen with a reaſonable hope of ſerving his country in ſome department.§ Election by lot is not, however, without its dangers, and may be fatal to the republic: the law ſhould therefore imitate Solon in diſcovering ſome expedient for preventing theſe dangers. *He* directed that thoſe alone ſhould be eligible who voluntarily preſented themſelves to the people, that

* The Athenians had laws directed to all theſe objects. See Petit's Attic Laws, lib. iii, *de Senatu Quingentorum et Concione*. Tit. 3, *de Oratoribus*.

§§The Athenians made a diſtinction between the magiſtrates called χειροτονητοι, *created by vote*, and κληρωτοι, *elected by lot*.

that the perſons elected ſhould be afterwards examined by the judges, and that every one ſhould be at liberty to accuſe them as unworthy their ſtation. The ſame herald who publiſhed the name of the candidate on whom the lot had fallen, demanded with a loud voice, "who will accuſe him?"* In this election the advantages of lot and choice, were at once united.

Theſe are the principal objects which conſtitute the relation of laws to the nature of a democratic government, and the rules derived from this relation. Let us now turn our attention to an ariſtocracy.† In this ſpecies of government, the ſovereign authority is in the hands of a determinate number of perſons. By the body of nobles are the

* Τις βουλεται κατηγορειν; See the Oration of Demoſthenes *de falſa Legatione*, and that of Eſchines againſt Cteſiphon.

† From what has been ſaid it may be clearly deduced, that a perfect democracy can ſubſiſt alone in a very ſmall ſtate. If the republic grow large, if after having been a city, it become a nation, then, we muſt either entirely change the conſtitution or have recourſe to repreſentation. Every city and village muſt nominate repreſentatives to exerciſe the legiſlative power in the name of the people, ſince they have it no longer in their power to meet together as before.

When the cities of Italy were incorporated into the citizenſhip of Rome, and enjoyed alſo the privilege of ſuffrage, the tumults which from this epoch accompanied the popular elections and deliberations, the impoſſibility of diſtinguiſhing thoſe who had a right of voting from thoſe who had none, and the numberleſs other diſorders ariſing from this incorporation, furniſhed Marius, Sylla, Pompey, and Cæſar, with a fit opportunity of deſtroying the liberty of their country and of overthrowing the republic.

Vide *Appian de Bell. civil. lib.* 1, and *Vell. Patercul. lib.* 2, *cap.* xv, xvi, xvii.

laws framed, by the ſame body is their execution directed:—the reſt of the people, ſays Monteſquieu, are with reſpect to them what the ſubjects in monarchies are with regard to the monarch. But this proportion is not ſtated with preciſion. In monarchies the ſovereign leaves to his people the executive power, but in ariſtocracies the people exerciſe neither legiſlative nor executive functions. A union of the three powers is centered excluſively in the nobles. This very partial diſtribution muſt naturally exaſperate the people againſt the ſovereignty. The law, therefore, ſhould yield them a compenſation, and thus appeaſe their reſentment. It ſhould afford every citizen a hope of entering into the body of nobles either as a reward for certain ſervices rendered his country, or through the influence of a ſettled ſum of money, as is the practice at Genoa. In this proſpect of acceſs, in this expectation, the whole proſperity of the ſtate originates.*

From ſuch an eſtabliſhment another benefit would ariſe. If it be true that ariſtocracies grow weak and corrupt in proportion to the diminution in the number of nobles compoſing them, if ariſtocratic families ſhould as much as poſſible ſpring

* The law whence this practice originated in Genoa is ſtill more equitable, and adapted to the nature of this government. It directs, that every year one family ſhould be choſen from the body of the people to be incorporated in that of the nobility; and that this election ſhould take place alternately from among the plebeian families in the city and thoſe of the Riviera. This law, however, is not obſerved in its full extent. The choice is no longer annual, nor is it made without the intervention of money, or of very conſiderable merit.

ſpring from the people; if the beſt ariſtocracy in the world be that which approaches neareſt to a democracy, like the government eſtabliſhed by Antipater at Athens;* if, in ſhort, time by deſtroying families, muſt at length deſtroy the ariſtocracy itſelf; laws to ſupply and prevent ſuch evils will be peculiarly ſalutary, and well adapted to the nature of the government.

Since the ſpirit of an ariſtocracy admits not that the people ſhould in any degree participate the functions of government, the laws ought at leaſt to be cautious in properly diſtributing the portions of power among the body of nobles. They ſhould diſtinguiſh thoſe acts, the execution of which appertains to the whole body, from thoſe which belong to the ſenate or the magiſtrate. Without an expedient, and diſtribution of this nature, diſorder will prevail on every ſide, and an ariſtocracy of all governments will be the worſt, ſince anarchy is more to be dreaded than deſpotiſm itſelf.†

* He directed, that no citizen poſſeſſing 200 drachmas ſhould be excluded the right of ſuffrage.

† There cannot be a more defective government than that where the authority is divided, while no portion of the ſtate knows the preciſe degree of its own power. Such was the deplorable ſituation of the Swedes prior to the reign of Guſtavus Vaſa. The oppoſite pretenſions of the king, the prieſthood, the nobility, the cities, and the citizens, formed a ſpecies of chaos which muſt have occaſioned the ruin of the kingdom a hundred times, had not the neighbouring people been immerſed in ſimilar barbariſm. Guſtavus Vaſa, uniting in his own perſon a conſiderable part of theſe various powers, drew the government into deſpotiſm,—but the Swedes were leſs miſerable under the deſpotiſm of Guſtavus than they were during the antient anarchy.

This diſtribution when ſettled, the laws muſt preſerve. They muſt create a magiſtracy to maintain an equilibrium between the different parts of the government. In all well regulated republics, as well ariſtocratic as democratic, this expedient has been adopted. It was the province of the Ephori in Sparta, and is now one of the terrible duties of the State-inquiſitors in Venice.* But to prevent the remedy from being worſe than the diſeaſe, the law muſt ſo limit and combine the authority and duties of this office, that even with the will there may not be a power of abuſing its influence. An exorbitant authority repoſed in a ſingle citizen of the republic is the moſt pernicious of evils; it creates, ſays Monteſquieu,§ a monarchy, or more than a monarchy. In the one, laws have been provided for the conſtitution adapted to its nature. The conſtitution itſelf reſtrains the monarch: but in a republic, if a citizen be inveſted with an exorbitant power, the abuſe is the greater becauſe the laws not having provided for ſuch an event, cannot reſtrain its operation.

Among all the means of preventing this evil, it ſeems moſt efficacious to limit, as much as poſſible, the duration of this magiſtracy. In every employment

* If this magiſtracy had ſubſiſted in Rome, the Decemvirate would not have been omnipotent, nor would the power of the conſuls and tribunes have been ſuppreſſed during the government of theſe ten legiſlators. The appeal to the people would not have been prevented; the functions of the other magiſtrates would not have been ſuſpended; nor would Appius Claudius and his accomplices have at the ſame time terrified the ſenate, the patricians, and the people.

§ Spirit of Laws, lib. ii, cap. 2.

employment the law ſhould counterbalance the extent of the power by the ſhortneſs of its duration. In this reſpect the Roman laws were admirable. The Dictator to whom the fate of the republic was entruſted, who allowed no power, no authority ſuperior to his own, in whom even aſſaſſination was lawful,*—the Dictator, I ſay, reigned only as long as the Romans found a neceſſity for his office.† He

* We may remember what happened under the Dictatorſhip of of Papirius, and the memorable action of his lieutenant, Servilius Ahala. *Livy* Dec. 1, lib. 14, cap. viii.

† In caſe the war or event which occaſioned his being appointed Dictator, terminated in leſs than ſix months: for the utmoſt duration of the office could not exceed that limit: On its expiration he diveſted himſelf of his power. If the affair terminated *before* this period, he uſually reſigned; but this abdication was voluntary, and not dictated by the law. This circumſtance has given riſe to the opinion of ſome lawyers and politicians, who imagine they obſerve in the dictatorſhip a dangerous office, becauſe, ſay they, its duration depended on the will of the perſon inveſted with it. But they have confounded the liberty which the dictator poſſeſſed of remaining in his office till the ſix months were expired, with a ſuppoſed right of not being removeable *after* that period. To undeceive them, it will be ſufficient to refer to *Dionyſius Halicarn. lib.* v, *p.* 331, and *Dion Caſſius, lib.* xxvi, *p.* 18, *B.* But as a thorough confutation, I think it my duty to tranſcribe the words of *Leg.* 2, § 18, *ff. de Orig. Juris*:—*Populo deinde aucto, cum crebra orirentur, bella, et quædam acriora a finitimis inferrentur interdum, re exigenti, placuit majoris poteſtatis magiſtratum conſtitui: itaque Dictatores proditi ſunt, a quibus nec provocandi jus fuit, et quibus etiam capitis animadverſio data eſt: hunc magiſtratum quoniam ſummam poteſtatem habebat, non erat fas ultra ſextum menſem retinere.*

From theſe laſt words it muſt clearly appear, that the Dictator could not avoid reſigning his office, becauſe it expired with the ſix months eſtabliſhed by law. Sometimes, indeed, the ſenate lengthened its duration to a *year*. Better would it have been had they never introduced this pernicious abuſe! *La prolungazione degl' imperi*, ſays Machiavel, *fece ſerva Roma.*—Machiavel's Diſcourſe on the 1 Decade of Livy, lib. iii, chap. xxiv.

He had neither time to indulge ambitious expectations, nor leiſure to avail himſelf of his power for the ſubverſion of liberty and the laws.* The Cenſor, on the contrary, whoſe province demanded greater auſterity of talents, who had rather an influence over manners than over the diſtribution of public power, who was more formidable to the citizen than to the ſtate, retained his authority during five years.† The conſulate, prætorſhip, and tribuneſhip, were annual, becauſe theſe were offices whoſe influence might raiſe parties in the republic.

The Cretans, not content with this preſervative againſt the abuſe of authority, had recourſe to inſurrections. When the ſupreme magiſtrates began to abuſe their rights, a portion of the citizens inſtantly combining, degraded them, and obliged them to return to a private ſtation. This conduct was conſidered lawful, and however pernicious a ſimilar expedient might be found in every other government, was of the utmoſt utility in Crete, as well from the nature of the conſtitution as

* Sylla was the firſt to render the dictatorſhip continual, and Cæſar to make it perpetual in the ſame perſon. But this was a uſurpation, not the exerciſe of a right: ſince it was totally forbidden by the law. And, in truth, after the overthrow of this eſtabliſhment, liberty was no longer ſeen in the republic. See *Lipſius Comm. lib.* 1.—Annalium Tacit. p. 1, num. 3.

† The Dictator Mamercus reſtricted it to eighteen months. See Machiavel's Diſcourſe on the 1 Decade of Livy, lib. 1, cap. xlix.

as from the patriotiſm that reigned among the citizens. §

Theſe are the general principles and rules derived from the relation of laws to the nature of an ariſtocratic government: I proceed to conſider monarchies.

That government is called a monarchy, where an individual reigns, under certain fundamental laws. Theſe fundamental laws neceſſarily imply ſome channels through which the authority is communicated, and ſome reſtraining powers to preſerve its moderation and ſplendor.

The nature of a monarchy, therefore, requires that between the monarch and people there ſhould exiſt an intermediate claſs or rank; not for the purpoſe of exerciſing any part of the authority, but rather for maintaining an equilibrium: and that there ſhould alſo be a depoſitory of laws, mediatorial between the ſubjects and the prince. The nobles form this intermediate rank, and the magiſtrates this depoſitory of laws.

The legiſlature ſhould conſequently aſcertain the rights of the one, and the duties of the other; it ſhould declare, what unfortunately is unknown in almoſt all the monarchies of Europe, the real rights of the crown, and the duties of the individual

§ See *Ariſtotle's Politics, lib.* ii, *cap.* x. The laws of the Athenians, in ſome meaſure, imitated the ſyſtem of the Cretans. They permitted every citizen to kill a perſon who had made any attempt againſt the liberty of the republic in the exerciſe of a magiſterial office.—Petit's Attic Laws, *lib.* iii, *de ſenatu quingentorum & concione. Tit.* ii, *de magiſtratibus.*

individual, on whoſe head it is placed: the limits of the legiſlative power, and the points in which the executive authority begins, and terminates:—the ſubdiviſions of this latter power, the different orders of magiſtrates, their dependence, the mode of appeals, their reſpective juriſdictions, ſhould all be determined. If on this regular diſtribution the ſecurity of the citizen under monarchical governments depend; if any acquiſition or uſurpation on either part be a loſs to the ſtate at large; if, when the monarch begins to aſſume the office of judge, or the judge that of legiſlator, liberty and ſecurity immediately forſake the nation; if, in ſhort, deſpotiſm, whether exerciſed by the magiſtrates, the nobles, or the head of the nation, be equally pernicious; we muſt be convinced how ſtrict an attention theſe particulars require from the legiſlator, how great preciſion from the laws.

But in modern legiſlations, on ſo intereſting, ſo delicate a ſubject, every thing, I muſt repeat it, is uncertain, equivocal, and undefined. The moſt experienced ability can ſcarcely diſtinguiſh ſophiſtry from truth, uſurpation from right, violence from juſtice. Amidſt the controverſies daily in agitation on theſe ſubjects, we diſcover men of the greateſt information on public rights, enſlaved by vulgar prejudices, recurring to hiſtory, exploring among the deciſions and cuſtoms of antient nations, examples or precedents to regulate their judgement; in ſhort, confounding with juſtice force, uſe, poſſeſſion, nay uſurpation itſelf. But

neither

neither hiſtory, nor cuſtoms, nor examples, nor grants, nor charters can give kings, or magiſtrates, or nobles, one right inimical to the liberty of the people, the ſecurity of the citizen, or the intereſt of the nation at large, whoſe happineſs muſt ever be the ſupreme law. Public welfare is the ſole principle on which this, and every other part of the legiſlation, ſhould be regulated, the ſingle object to which it ſhould be directed. Now the liberty of the people, the ſafety of the citizen, the proſperity of the ſtate requires, that in monarchies the monarch ſhould protect the people from external enemies by the diſpenſation of war, peace, and every object dependent on the law of nations; that he ſhould eſtabliſh and preſerve good order and tranquillity internally, by laws at once general, preciſe, ſimple, and perſpicuous; and leave to magiſtrates the care of adapting them to particular caſes; that theſe magiſtrates ſhould not be judges of law, nor capriciouſly interpret them, nor under pretence of equity ſwerve from their expreſs dictates; that the citizen ſhould not ſee his judge in his legiſlator, nor his legiſlator in his judge; that ſome legal expedients ſhould be adopted for enſuring the juſtice of their decrees; that the citizen ſhould be convinced of its being the law that abſolves or condemns him, and not the favor or hatred of the judge. The dignity and order of a monarchy requires, in ſhort, that there ſhould be a body of nobles, to reflect on the nation the ſplendor it borrows from the throne, and placed between the

monarch

monarch and the people, to obviate the ſhocks which theſe two bodies might oppoſe to each other, were they not prevented by a medium of ſeparation. To all theſe objects, then, muſt the legiſlator direct his attention, in order to adapt his law to the nature of a monarchical government, and to correct the vices, and prevent the evils to which this conſtitution is expoſed.

I do not enter into a detail of the means to be employed for obtaining ſucceſs: ſince, as may have been obſerved in the plan prefixed, I muſt neceſſarily ſpeak of theſe means in different parts of the work where the diſtribution of my ideas leads me to conſider them. What I have here ſaid is ſufficient to give a general idea of the objects which conſtitute the relation of laws to a monarchical government, and of the great principle which ſhould ſuggeſt and direct their operation.

But beſides the three kinds of governments already mentioned, there is another, neither abſolutely a monarchy, nor an ariſtocracy, nor a democracy, but a mixture of all theſe different conſtitutions; and unleſs properly corrected by the laws, participating more the inherent vices of each, than their reſpective advantages; a government rather praiſed than analyzed by the politicians of the age; which was never perfectly underſtood by Monteſquieu himſelf, and which is expoſed to a danger unknown to other ſtates, that is, of degenerating into deſpotiſm without a change in the conſtitution,

conſtitution, and of being ſubjected to *real* tyranny, without loſing a *ſeeming* liberty.

This is the government of a nation, which for a century paſt has attracted the attention of all Europe, but at preſent ſeems to call for her commiſeration. It is the government of *Great-Britain*—a government where the prince can do nothing without the nation, but can betray it at his pleaſure; where the ſenſe of the public is almoſt always in oppoſition to the majority of the ſuffrages of thoſe by whom it is repreſented; where appearances are conſidered ſymptoms of liberty, which unhappily are but ſo many commutations for oppreſſion; and where, to the ſcandal of the inhabitants, licentiouſneſs prevails rather than freedom. Let us then examine the principles and rules derived from the relation of laws to the nature of this ſpecies of government, commonly called *mixed*, and obſerve how legiſlation might correct its defects, and evade its dangers.

I ſhall perhaps be more diffuſe than I ought in this reſearch. But let this fault be pardoned, on account of the novelty of my opinions, which cannot be well explained in a ſmaller compaſs.*

CHAPTER

* Polybius, Book vi, obſerves, that the beſt conſtitution is that wherein all the three forms of ſimple and moderate governments are united. But in determining the idea of ſuch a conſtitution, he diſtinguiſhes by this appellation the government eſtabliſhed by Lycurgus in Sparta. After having pointed out the defects of monarchies, ariſtocracies, and democracies, he ſays:

Α' προϊδομεν

CHAPTER XI.

Prosecution of the same Object under the Species of Government called mixed.

THE multiplicity and diversity of constitutions, which have been either with reason, or abusively distinguished by this appellation, will not permit me to generalize my ideas on the subject.

Such

Ἁ προϊδομενος Λυκοῦργος ουχ ἁπλην, ουδε μονειδη συνεστησατο την πολιτειαν, αλλα πασας ὁμου συνηθροιζε τας αρετας, καὶ τας ιδιοτητας των αριστων πολιτευματων. *Lycurgus having foreseen this, did not establish a simple and uniform republic, but collected into one all the virtues and properties of each of the most excellent forms of government.*—But I would ask Polybius, what he understood by *simple democracy*: Did he mean a state where the people exercise at the same time the offices of legislator, magistrate, senator, judge, and leader of the army in time of war?—If this be his idea of a *simple democracy*, the existence of such a government is a political impossibility. But if he called that government a *simple democracy* where the sovereign power is in the hands of the people, who make laws, create magistrates, form a senate of the most respectable citizens, chuse one or more heads to direct their affairs in war, or perpetuate this honor in the same family—in this case the government of Sparta was a simple democracy, and not a mixed government. The two kings, though hereditary, had no authority in Sparta in time of peace. Even in war they were dependent on a council, which was usually formed of their greatest enemies. *Arist. de Rep. lib.* ii, *page* 331. The decrees of the senate itself had no force without being approved by the people. Where then is the monarchy to be found? Where the aristocracy?—

Thus Polybius writes a panegyric on the democracy of Sparta, and not on *mixed government* in general.

The secretary of Florence has fallen into a similar error. See his Discourse on the first Decade of Livy. *Lib.* 1, *cap.* ii.

Such a reſearch would require a ſeparate work—a work diffuſe and voluminous. But as the only end of an inquiry into the relation of laws to the nature of a government, is the aſcertaining thoſe principles and rules which point out to the legiſlator the defects in its organization, and the remedies adapted to their correction; I could not obtain this end without involving myſelf in a very minute detail, had I propoſed in the preſent chapter to ſpeak of every poſſible form of government that may be enumerated under the claſs of thoſe commonly called *mixed*. Unable, therefore, to ſpeak generally of All, I have thought it moſt adviſeable to direct my views to one, which comprehends, with greateſt accuracy, a union of the three conſtitutions already defined; to which almoſt every government included under the appellation of mixed, may be referred; and which bearing a perfect analogy to a conſtitution the beſt known in Europe, will enable me to combine reaſon with experience, and unite the force of argument with the evidence of fact.

The Britiſh government then is the model on which my reaſonings, in this Chapter, will be employed.—Let us begin by defining it.

By a *mixed* government I mean, that, where the ſovereign power or legiſlative faculty belongs to the whole nation, which is repreſented by an aſſembly divided into three bodies, the nobles or

patricians, the repreſentatives of the people,* and the king—all of whom muſt exerciſe this legiſlative authority in conjunction; and where the *executive* power, as well in things dependent on civil rights, as in thoſe that depend on the rights of nations, reſides excluſively with the king, who in the exerciſe of his functions is independent.‡

Now conſidering a mixed government in this view, there are three inherent defects in its conſtitution, *the independence of the executive on the enacting power,—the ſecret and dangerous influence of the prince in the aſſemblies of thoſe bodies which repreſent the ſovereignty,*—and *the inconſtancy of the conſtitution.* Legiſlation muſt not change the eſſence of conſtitutions, it muſt only correct their defects. All the principles then dependent on the relation of laws to the nature of this government, muſt be directed to the choice of expedients for preventing the ruinous conſequences of theſe three defects. But before we ſeek a remedy, let us ſatisfy ourſelves of the exiſtence of the diſeaſe.

In each of the three different forms of government, mentioned in the preceding Chapter, the various

* Choſen by them for a certain time, and ſupplied at the expiration of the term by other repreſentatives, in like manner choſen by the people.

‡ In England, ſays Blackſtone, the law was obliged to conſider the king independent in the exerciſe of the powers repoſed in him, otherwiſe the monarchical part of the government would diſappear. See his Commentaries on the laws of England.—In the courſe of this work we ſhall remark how the ſame law has found an expedient for remedying its inconveniencies, without deſtroying this independence.

various portions of power are diſtributed according to their nature, being divided amongſt the different organs deſtined to give them effect; but theſe are not independent of each other; their movements muſt neceſſarily be uniform, their direction to a common end. From one ſource they flow; in one principal wheel the motion of all originates. If the ſovereign who makes the law be not the inſtrument of its being executed; if he muſt repoſe in the hands of magiſtrates the judicial power, yet he poſſeſſes in himſelf the public ſtrength, and of conſequence the inſtrument beſt calculated for enforcing reſpect to his commands and obliging the magiſtrate not to ſwerve from their dictates.

But in a mixed government the whole national ſtrength is repoſed in that magiſtrate on whom alone the execution of the law depends. The ſovereign, or aſſembly repreſenting the ſovereignty, may enact laws at pleaſure; but the power who muſt execute them is not only independent, but is even more powerful than the ſovereign by whom theſe laws are enacted. How, then, muſt his negligence be obviated,—how puniſhed his infractions?

In democracies the people, in ariſtocracies the body of nobles, in monarchies the monarch, may at will remove a magiſtrate who makes a pernicious uſe of his power, who deſpiſes the laws, or arbitrarily diſpoſes of the life or the property of the citizen. But in this government, where the magiſtracy is exerciſed by the king, and the ſovereignty

reſides in the aſſembly, in which the king himſelf is one of the three conſtituent bodies—in ſuch a government, I ſay, with whom can the right or the power of puniſhment reſide?

Can the parliament in England dethrone their king? Has it a right or power of enforcing ſuch an act? Muſt not the king himſelf ſign the decree of his own condemnation, to make it legal? Muſt he not himſelf direct its execution? Does not a fundamental maxim of this conſtitution allow that he is infallible, that no juriſdiction on earth can have a right of judging or puniſhing him; that if the parliament itſelf aſſumed this right, the national conſtitution would be overturned, becauſe in that caſe the legiſlative authority would uſurp the rights of the executive power, which the very conſtitution of this government acknowledges to be independent.—Is not the perſon of the king declared by a fundamental law of this nation, to be *ſacred even though he ſhould cauſe meaſures to be purſued completely tyrannical and arbitrary?**

Have not the ableſt writers been obliged to confeſs, that the law has not foreſeen the poſſible caſe of a king, who might wiſh to deſtroy the political liberty of the people of England, and that in ſuch an event they would have no remedy, but one ſimilar to the Cretan inſurrections?†

To

* *Blackſtone, tit.* 1, *cap.* vii. It may be obſerved, that this celebrated writer is the moſt able apologiſt for the conſtitution of his country.

† *Blackſtone. Ibid.*

To render the act legal which deprived James II of the Engliſh crown, was there not a neceſſity of ſuppoſing that this prince had renounced the throne by departing the realm, and voluntarily abdicated a crown, which no power could have legally taken from his head, notwithſtanding the outrages he had offered to the conſtitution, and the open war he had declared againſt the national liberty?*

The independence then of the executive on the legiſlative power (a defect peculiar to this government, but founded on a prerogative which cannot be deſtroyed without ſubverting the conſtitution) is the firſt evil that legiſlation ought to repair. The ſecond, as we have before obſerved, is the ſecret influence of the prince in the aſſemblies which repreſent the ſovereignty.

In mixed governments of this nature the king has a double influence on theſe aſſemblies. Conſidered as one of the three bodies which compoſe them, it is indiſpenſable that he ſhould poſſeſs a negative power, I mean a right of oppoſing the determinations of the two aſſemblies, as well becauſe the conſtitution requires that theſe three bodies ſhould in conjunction exerciſe the legiſlative authority, as becauſe if this power did not belong to the king, the legiſlative influence might deſtroy the executive force, and uſurp its rights without reſiſtance.

* Blackſtone. Ibid.

A negative influence, therefore, is legal and neceſſary. But the king in mixed governments being ſole diſtributor of all employments, both civil and military, and ſole diſpenſer of the national revenue, invariably poſſeſſes money for purchaſing at his pleaſure a plurality of ſuffrages, and making the parliamentary repreſentatives of the people the mere organ of his will. Now it is this ſecret and dangerous influence which may deſtroy the national liberty without ſubverting the conſtitution, which may oppreſs the nation without endangering the oppreſſor. In all other governments fear is the inſeparable companion of oppreſſion. If a monarch in an abſolute monarchy would ſtrain the bonds of his people, if he would violate thoſe pacts on the faith of which he mounted the throne, if he would burthen his ſubjects with inſupportable contributions, the fury of the people is ever before his eyes to affright him from his purpoſe: he ſees his throne totter, he ſees the danger to which his very exiſtence is expoſed. But in mixed governments, the king, who can always make uſe of the arm of the parliament for oppreſſing the nation, may do this without much fear. He knows the aſſembly will always be reſponſible to the nation, he knows the popular indignation will never be directed to his perſon. He poſſeſſes, therefore, one inſtrument more, and ſo many obſtacles leſs, to favour his becoming an oppreſſor. Eaſily will he aſſume this character, if to the will he add abilities for ſucceeding. Let him not with his

own

own hand deſtroy the ſemblance of the conſtitution, let him reſpect the rights of the aſſembly; and content himſelf with making uſe of its influence, he may then ſatisfy his utmoſt wiſh without danger.* Had James II. made uſe of the parliament for re-eſtabliſhing the Catholic church; had he employed the ſame means for recalling, that one of his anceſtors employed for proſcribing its authority; inſtead of following the examples of his grandfather James I, and his father Charles I.; had he imitated the policy of Henry VIII, and Elizabeth; had he known like them, to make the parliament blind executioners not only of the will, but of the very caprices of the crown; had he not openly offered violence to the conſtitution, by enacting new laws and deſtroying old ones without the authority of parliament, the crown of England would never have been fixed on the head of the Prince of Orange; nor would the nation have ever joined to oppoſe their King. The party of the Engliſh church would at worſt have burnt the houſes of a few members of parliament, and all

* When Auguſtus re-eſtabliſhed the authority of the ſenate, he ſaw that his chief object conſiſted in diſpoſing of this aſſembly, and not in weakening its influence. Anxiouſly intent on hiding amidſt the clouds his omnipotent power, of veiling his irreſiſtible ſtrength from the view of his ſubjects; he choſe to make a ſhow of the office of the ſenate, rendering it in fact the inſtrument of executing decrees, dictated by himſelf. Far from imagining this aſſembly an obſtacle to his views or a counterpoiſe to his authority, he found it the ſupport of his ſecret omnipotence, and the ſhield of his ſafety. We may be aſſured there is no deſpotiſm worſe than that which is concealed under the veil of liberty.——See Gravina *de Romano Imperio.*

would have ended. Does not the ſingle reign of Henry VIII. afford an incontrovertible evidence to ſupport this reaſoning?

What did not *he* perpetrate under the auſpices of parliament? what attempts was not *he* guilty of againſt the liberty of the people, the public ſafety, the decency of manners, and the ſanctity of religion? Was it not with the arm of parliament that he raiſed the ſcaffolds on which the mothers of heirs to the crown expiated the diſgrace of having yielded to the love of the moſt abominable of men? Did not the two houſes lend their aid to kindle thoſe piles, on which the moſt valuable citizens of the ſtate terminated their exiſtence? Was it not the parliament that decreed the mere will of the king ſhould have the force of law?* Were not all the brutalities of tyranny in his reign adopted as ſo many principles of legiſlation? Did not the liſt of felonious offences become more numerous and capricious in the Engliſh code than in the juriſprudence of a Nero or a Tiberius? Was not the phrenzy, common to tyrants, of reigning over the ſouls as well as the bodies of the people, a phrenzy ſo fatal to the human race, made legal by this auguſt aſſembly? In what inſtance does the hiſtory of this prince differ from that of the moſt ſhocking monſters that ever ſtained with blood the thrones on which they ſat, except that the latter perpetrated with trembling hands what Henry did with

* Stat. 13 Henry VIII, cap. 3.

with greater ſecurity under the protecting wing of parliament?*

Were every other reaſon wanting, this paſſage alone of the Britiſh hiſtory muſt be ſufficient to perſuade us that in mixed governments of this kind the king will always have it in his power to act as he pleaſes, and even oppreſs the nation without changing the conſtitution, or expoſing his perſon to the ſmalleſt hazard. It is enough, if he have the art of corrupting the aſſembly which repreſents the ſovereignty. He poſſeſſes the means. How then hinder his making uſe of them, without deſtroying the conſtitution? This is the ſecond object of legiſlation conſidered in its relation to the nature of his government.

The laſt inherent defect of this conſtitution is a continual fluctuation of power between the various bodies participating the ſovereign authority; a fluctuation

* The author, with conſiderable ingenuity and eloquence, has laboured in the preceding pages to demonſtrate the dangerous influence of the prince in parliament. Of this aſſembly he conceives the king may always avail himſelf for effectuating the purpoſes of deſpotiſm. To controvert his opinions with ſucceſs, the contracted limits of a note are inſufficient. The inſtance however ſo forcibly urged in ſupport of this reaſoning, does not appear to the tranſlator completely deciſive. During the reign of Henry VIII. the rights of parliament were neither underſtood nor acknowledged: The nation, corrupt in the extreme, had been impoveriſhed by the oppreſſive exactions of Henry VII, his predeceſſor, from whom he derived a vaſt accumulation of wealth: the moment was propitious for purchaſing ſycophants and betrayers of their country, and Henry had money to effect what his deſpotic inclination ſuggeſted. Deteſting his tyranny and brutiſh vices, we muſt nevertheleſs acknowledge ſome obligations to that undaunted ſpirit which firſt effectually rent the fetters of papal uſurpation.—T.

a fluctuation difficult to be prevented, and to which the inconſtancy of the conſtitution may be ultimately attributed. On this point we may eaſily be ſatisfied.

In all governments on earth the power of framing, aboliſhing, or changing fundamental laws, is a right excluſively belonging to the nation. This right is not annexed to the ſovereignty, except in ſtates where the ſovereign power is itſelf exerciſed by the nation at large. Now, in popular and mixed governments alone can this be the caſe; in theſe only can the ſovereign alter or ſubvert the conſtitution at pleaſure.

In popular governments the exertion of ſuch an authority muſt neceſſarily be very rare, ſince an oppoſition of ſtrength views, or intereſts cannot often ariſe between the different bodies among which the different degrees of power are diſtributed. But in mixed governments, where the various bodies dividing the authority, are in a perpetual ſtate of contention for increaſing the portion of power wherewith they have been ſeparately entruſted; where the aſſembly which repreſents the ſovereignty and poſſeſſes the power of diſpoſing of the conſtitution, has always an intereſt in making alterations (either for extending the portion of authority it poſſeſſes as ſovereign, or diminiſhing it in favour of a perſon who can amply recompenſe its members for a ſacrifice which coſts them very little:) in mixed governments of this kind, the conſtitution can never be ſtable, but muſt be

ſubject

ſubject to continual changes, ſince every alteration either ſerves the purpoſe of the body by which it is made, or promotes the intereſt of its members.

England, which has ſupplied me with ſo many facts in proof of my former propoſitions, would alſo afford me abundant evidences of this laſt truth, but fearful of being unſeaſonably prolix, I content myſelf with obſerving, that the hiſtory of this nation may be called the hiſtory of its conſtitutional viciſſitudes; and that the character of the king has always given a tone to the conſtitution. Under a prince of ſlender ability, or embarraſſed by untoward circumſtances, the two houſes have always uſurped the prerogative of the crown; but under a ruler of courage and penetration they have invariably ſold a conſiderable part of their own: who that obſerved this government under Charles I. could have recognized it under the ſucceſſors of James II.? The preſent vigor of parliament muſt be conſidered rather as the effect of certain tranſient circumſtances, which render it ſtill precarious, than the reſult of a ſolid and permanent principle. Should the heir of George III. of Hanover inherit only his abilities and crown without his virtues and moderation; ſhould a reign, diſturbed by war and diſcord between a portion of the ſame citizens, be followed by a reign of peace; ſhould the neceſſity of treating the ſubjects of the crown with indulgence, as an inducement to their paying for the very air they breathe, in order to ſupply means of ſupporting a ſhameful war againſt their own brethren,

thren, at length diſappear; ſhould a concurrence of circumſtances like theſe, I ſay, accompany the heir of Great-Britain to the throne; they would be ſufficient to ſhow us how the pretended fetters of regal dignity might once more grow flexible; the parliament loſe its vigor, and the throne become again omnipotent. Let us recollect what happened under Cromwell, and what a ſudden aſcendant the very ſhadow of the crown gained over the people, when fixed on the head of an abſolute uſurper.†

The inconſtancy of its conſtitution is the third inherent defect of this government. Perſuaded that theſe defects exiſt, let us ſeek the means to be uſed for their prevention.

The firſt, it has been obſerved, is the independence of the executive on the enacting body; yet this independence is eſſential to the conſtitution,

† *Neſſuno ſtato ſi puo ordinare*, ſays Machiavel, *che ſia ſtabile ſe non è o vero principato, o vera repubblica: perchè tutti i governi poſti intra queſti due ſono diffettivi. La ragione è chiariſſima, perchè il principato ha ſolo una via alla ſua reſoluzione, la quale è ſcendere verſo la repubblica è così la repubblica ha ſolo una via da reſolverſi, la quale è ſalire verſo il principato. Gli ſtati di mezzo hanno due vie potendo ſalire verſo il principato e ſcendere verſo la repubblica, d'onde naſce la loro inſtabilità.* No form of government that can be deviſed will be durable unleſs it be either a true principality or a true commonwealth: intermediate forms muſt be neceſſarily defective. The reaſon is obvious: a principality can only be ruined in one way, by deſcending into a commonwealth. Nor has a commonwealth more than one mode of being diſſolved, by aſcending to a principality. But intermediate forms may be ruined in a double manner, ſince they may aſcend to a principality, and deſcend to a commonwealth. Hence ariſes their inſtability.—See his Diſcourſes on the Reform of the State of Florence, delivered at the inſtance of Leo X.

tion, conſequently it cannot be deſtroyed. But might not legiſlation modify without deſtroying it?—In one way alone—by making a diſtinction between the *executive* and *judicial* power. I will explain myſelf.

In a well-regulated mixed government it is eſſential to the conſtitution that the king ſhould poſſeſs the whole power of executing the laws; but it is not equally eſſential that he ſhould perſonally exert this power in its fulleſt extent. Whether he exerciſe it himſelf, or cauſe it to be done by others in his name and by his authority, the nature of the conſtitution remains unchanged. Whatever I cauſe to be done by another in my name and with my authority, is conſidered my own act.

It cannot, therefore, be contrary to this ſyſtem of government that the king ſhould have fixed and immutable tribunals, poſſeſſing no power properly their own, but as the mere emanations of the regal prerogative, exerciſing the judicial office in the king's name, and by his authority. Now if the exiſtence of theſe tribunals be not inconſiſtent with the nature of this government, the duty impoſed on the prince of not availing himſelf of his judicial power, but through the medium of theſe tribunals, will not appear an unconſtitutional meaſure. The king, though conſtrained to make uſe of his courts in the exerciſe of the judicial power, will thereby loſe nothing of his prerogative, theſe tribunals being conſidered but as the organs of his will. By ſeparating in this manner the judicial

judicial from the executive power, by ſeparating it, I ſay, as to fact but not as to right, the king, notwithſtanding the infallibility and independence which the conſtitution yields him, will neither be enabled to elude the law, nor by arbitrary deciſions to diſpoſe of the life, the honor, or the property of his citizens. If *he* be independent, if there be none to accuſe, no legal power to judge him, yet this is not the caſe with his courts of juſtice, or the members that compoſe them. The determinations of one court may be examined and reverſed by a ſuperior tribunal. A citizen oppreſſed by a magiſtrate may accuſe him before a competent judge, and the magiſtrate may be puniſhed. None of theſe proceedings would be contrary to the nature of the government. The king's prerogative would not be deſtroyed, it would only ſuffer a modification in favour of the public ſafety.

The Engliſh legiſlature, aware of its neceſſity, has adopted this remedy. In times when her conſtitution was much more defective than it now appears, the king alone frequently decided in perſon the controverſies of the citizens, and paſſed judgement on their ſuits. But the mere exerciſe of this right ſoon manifeſted the ruinous conſequences that might reſult. It was therefore ſettled that the judicial power ſhould be always exerciſed in the name of the king by his tribunals: and that theſe ſhould be the immediate depoſitaries of the laws.*

In

* Blackſtone, ibid. p. 387, 388.

In later times the king was alſo deprived of the right of depoſing at his caprice the members of theſe tribunals. The law, in order to prevent injuſtice and oppreſſion on the part of the executive power, having ſought to place the judicial authority in the hands of magiſtrates, determined alſo to inſure their punctuality. The ſtatute 13 William III, chap. 2, ſays, that the commiſſions of the judges ſhall continue as long as they ſhall faithfully perform the duties of their office: *quamdiu bene ſe geſſerint*: not while it may be pleaſing to the king—*durante bene placito.*†

Thus might legiſlation repair the firſt defect inſeparable from the organization of theſe governments. The Engliſh legiſlature is admirable in this firſt inſtance: but have ſimilar precautions been ſuggeſted to repair the two remaining defects? What remedy has been oppoſed to the ſecret influence of the prince in the parliament? Some meaſures, we muſt allow, have been adopted to prevent the election of the members that compoſe the houſe of commons from falling on perſons openly devoted to the crown. Thoſe who are engaged in certain employments, the appointment of

† This eſtabliſhment, united to the ſuppreſſion of the *Star-Chamber*, enſures in a certain degree the force and authority of the laws in England. The Star-Chamber, whoſe ſpirit differed from that of the other tribunals, which allow nothing as law but the *common* or *immemorable* law, and acts of parliament, acknowledged the particular proclamations of the king's council, and on theſe grounded their deciſions. While this exotic production was rooted in the Britiſh conſtitution, the power of the law was not ſufficient to protect the innocence of the citizen.

of which depends entirely on the will of the prince are declared ineligible to a ſeat in the aſſembly. All penſioners of the king, it is true, are excluded,* but

* Blackſtone, ibid. T. 1, p. 251, 152.—I cannot imagine how this lawyer could conſider theſe eſtabliſhments as impregnable bulwarks of his country's liberty. By penſioners of the king, are underſtood thoſe comprehended in the civil liſt. But how are ſecret penſions prevented? Is not the circumſtance of their being removeable a bond to unite thoſe who obtain them more cloſely with the miniſtry? Indeed the lower houſe is conſtantly filled with perſons in employments, all derived from the prince. The offices excepted are comparatively very inconſiderable.

That the Engliſh reader may be enabled to determine with accuracy, under what circumſtances perſons accepting places or penſions are rendered ineligible, or vacate their ſeats in the houſe of commons; the tranſlator imagines a conciſe ſtatement of the ſtatutes now ſubſiſting on the ſubject, will not appear unacceptable:

By Stat. 5 W. & M. c. 7. § 57. } Members of the houſe of com-
12 & 13 W. III, c. 10. } mons are precluded from executing by themſelves or deputy, any office or place concerning farming, collecting, or managing the cuſtoms, and any member exerciſing ſuch office is declared incapable of *ſitting or voting* as a member of the houſe, but is not ineligible.

By 6 Anne, c. 7, § 25, 26. Perſons in their own name, or that of any other, exerciſing any *new office* or place of profit under the crown, (created ſince 25 Oct. 1705) commiſſioners of prizes, ſecretaries or receivers of prizes, comptrollers of army accounts, commiſſioners of tranſports, commiſſioners of ſick and wounded, agents for regiments, commiſſioners for wine licences, governors or deputy governors of the plantations, commiſſioners of the navy employed in outports, penſioners of the crown during pleaſure (and by 1 G. I, c. 56, penſioners for years certain) are incapable of *being elected, ſitting or voting* as members of the houſe: their election is declared void, and any perſon ſo ſitting or voting forfeits 500 £.

But this act does not incapacitate officers of the navy or army, nor does it prevent perſons, who after they have been elected members, accept of any office of profit from the crown during the time of their continuing ſuch members, (whereby their ſeats become void, and new writs iſſue), *from being again elected.*

By

but what does this avail? Is not a man who has once inſinuated himſelf into the houſe, in a ſituation of hoping for, and obtaining what before he could not expect? Are not the principles of hope and ambition more active in their operation than thoſe of gratitude and remembrance?

But allowing what is not the fact, that theſe regulations have tended in ſome degree to enſure an

By 7 G. II, c. 56. No judge of the court of ſeſſions, juſticiary, or baron of the court of exchequer, in Scotland, is capable of *being elected*, ſitting, or voting.

By 15 G. II, c. 22. Commiſſioners of the revenue in Ireland, commiſſioners of the navy or victualling offices, deputies or clerks in ſuch offices, deputies or clerks in the ſeveral offices of lord high treaſurer, commiſſioners of treaſury, chancellor of the exchequer, lord high admiral, commiſſioners of the admiralty, paymaſters of the army or navy, principal ſecretaries of ſtate, commiſſioners of ſalt, ſtamps, appeals, wine licences, hackney coaches, hawkers or pedlars; perſons having any offices, civil or military, in the iſland of Minorca or at Gibraltar, excepting only officers having commiſſions in regiments there, are declared incapable of *being elected* ſitting or voting. Their election is void, and perſons preſuming to ſit and vote forfeit 20 £. a day.

This act does not however exclude the treaſurer or comptroller of the navy, ſecretary to the chancellor of the exchequer, ſecretaries of the treaſury or admiralty, under ſecretary to any of the principal ſecretaries of ſtate, deputy paymaſter of the army, *or any perſons having offices or employments for life, or ſo long as they behave themſelves well in office.*

By 22 G. III. c. 45. All perſons, directly or indirectly, holding any contract with the commiſſioners of the treaſury, navy, or victualling offices, the maſter of the ordnance, or any other perſon on account of the public ſervice, or furniſhing any money, wares, or merchandize to be employed on ſuch ſervice, are rendered incapable of *being elected* or ſitting: the election of perſons ſo diſqualified is void, preſuming to ſit they forfeit 500 £. a day, and are incapacitated from holding any contract for public ſervice.—T.

an impartiality in the members of the houſe of commons, what remedy has the Engliſh legiſlature oppoſed to the influence of the prince in the houſe of peers, which by the perpetuity and rank of its members, has always a ſuperior weight in the deliberations? Inſtead of diminiſhing, has it not ſtrengthened this dangerous influence? Has it not given the prince a right of creating as many lords as he pleaſes,* and is not a lord ſo created an additional vote on the ſide of the king? Are not the biſhops or ſpiritual peers ſo many creatures of the prince?§ Are they not other twenty-ſix votes devoted to his ſervice?—There is not a prince in Europe who has ſo many employments to beſtow, ſo many benefices to diſtribute as the king of England: the legiſlature, inſtead of reſtraining his munificence, has rendered it inexhauſtible. An Engliſhman may hope every thing from his king, but nothi. g from the parliament.

Let us then quit the Engliſh legiſlature, which offers us no proper remedy for this defect in its conſtitution. Let us be content with propoſing one, which from its ſimplicity and eaſe of application, appears to me the moſt adviſeable: In a government of this nature it is impoſſible to deprive the king of the diſtribution of all employments, civil as well as military. This right is conceded

* The king may create as many Peers as he pleaſes.—Vide *Blackſtone, vol.* 1.

§ The king has an excluſive right of nomination to all Biſhopricks.—*Blackſtone, vol.* 1, *c.* 11.

conceded to him by the conſtitution, which entruſts him with the whole executive power, as well over things dependent on civil rights, as over thoſe which depend on the rights of nations.

We have ſeen how little benefit was experienced in Sweden and Poland from a diminution of the regal prerogative in this particular. Let us not, therefore, indulge a thought of aboliſhing or infringing a right which the conſtitution itſelf renders inſeparable from the crown. Legiſlation, I repeat it, has neither a right nor a power of ſubverting the conſtitution, it muſt only remedy its defects, and its vices. Let us then reſign to the king a liberty of diſpoſing of all employments dependent on the double executive power confided to him. Let us ſeek only to balance the influence this right may give him, by inveſting other privileges in the aſſembly which repreſents the ſovereignty. Let this aſſembly poſſeſs a munificence adapted to its dignity. As ſovereign, it ought alone to diſpoſe of the members of the ſovereignty. What can be more abſurd than the right poſſeſſed in England by the king, of creating both ſpiritual and temporal peers? Are not theſe ſo many members of the ſovereignty? and can the king, who by the nature of the government is *not* ſovereign, communicate to others what *he* does not poſſeſs?*

Is

* When the ſtate of popular repreſentation in England is rendered conſiſtent with the avowed principles of the conſtitution, this theoretical abſurdity will be found a practical excellence.

Is not this an abſurd and dangerous ſacrifice offered by the legiſlative body in favour of the executive power? Is not this a means of depriving the people of their tribunes to make ſo many perverſe royaliſts? Muſt not the principles of a free conſtitution be conſidered as irrecoverably loſt, when the moſt reſpectable part of the legiſlative body is created by the executive influence? If then, ſo far from being inimical to this conſtitution, it be conſiſtent

If, as the author himſelf allows, the executive power ought not to be fettered with ſeverity; it will appear that the regal privilege of creating peers preſerves the energy of the executive office, and annexes a proper reſpect and dignity to its exertions. So far from being dangerous to the conſtitution this expedient ſeems well calculated for maintaining its equilibrium, and enſuring its ſtability.

In remote ages the king needed the co-operation of the inhabitants of cities and boroughs, and of their repreſentatives, to aſſiſt him in reſiſting the uſurpations of the barons: at preſent, from a proſperous change of circumſtances, the proportion of landed and pecuniary property is conſiderably in favor of commoners. With them conſequently reſides a proportionate degree of power. Now, were the mode of election reformed on conſtitutional principles, (a meaſure indiſputably neceſſary,) were the venal influence exerciſed by the king and the peers in electing members of the lower houſe effectually overthrown, were the people at large and the national property really and not nominally repreſented, the conſequent augmentation as well in electors as repreſentatives, would give ſo ſerious a weight to the popular influence as muſt ever protect the nation from the dangers that might otherwiſe be dreaded from a deſpotic exertion of the regal prerogative in the creation of nobility.

On the other hand, after theſe neceſſary changes in the mode of election have been effected, ſhould this privilege be taken from the king and conceded to the three bodies conjunctively exerciſing the ſovereignty, the popular influence would inſtantly poſſeſs a fatal preponderance. Feeling their ſuperior energy, the houſe of commons, as experience gives us ample reaſon to conclude, would make continual inroads on the power of the crown, and by repeated encroachments at length render the king impotent, and deſtroy the balance of the conſtitution.—*T.*

conſiſtent with its nature, that the aſſembly repreſenting the ſovereignty ſhould have a right of adorning it with any individual worthy to ſhare its functions; let this aſſembly, in particular, poſſeſs an excluſive authority of granting to thoſe who may be thought worthy the diſtinction, as a reward for noble actions and ſervices rendered their country, the right of ſitting in the upper houſe: let not patents of nobility be emanations of the prince, but rather teſtimonials of gratitude offered by this auguſt aſſembly to the citizen who may have diſtinguiſhed himſelf either by his virtues, his uſeful abilities, or his parliamentary zeal, in boldly oppoſing the unjuſt pretenſions of the crown: let it belong excluſively to the aſſembly to diſtribute all honours or rewards founded on public opinion—rewards often more flattering and held in higher eſtimation by a free nation than all the mercenary employments the prince can beſtow, which are uſually accompanied with the badge of ſervitude. Among other rights of this aſſembly, let it poſſeſs a power of expelling members become ſuſpected;† let the perſons who have deſervedly incurred this expulſion be rendered for ever unworthy of ſerving their country, and incapable of exerciſing any employments in the gift of the prince: let the number of theſe employments be limited by the law as much as

† The houſe of commons is already warranted in expelling members who become infamous; but does not, it ſeems, poſſeſs the right of rendering them *for-ever ineligible*. It has nevertheleſs a power to perſevere in the expulſion of ſuch members, as often as they may be elected.—*T.*

as poſſible. In the exerciſe of that munificence and *parliamentary* authority which reſpects the rewarding or puniſhing their members, let the meeting of the two houſes be ſufficient to warrant their proceedings in ſpite of the king's negative.* Let not legiſlation be content with merely preventing corruption in the members of this auguſt aſſembly, but ſtrive alſo to prevent it in their electors: by the aid of education, rewards and honors, let the love of glory, ever accompanied by patriotic enthuſiaſm, once more awaken her influence.—When the citizens ſhall ceaſe to make an infamous traffic of their ſuffrages, when they ſhall no longer ſell their liberty to their repreſentatives, when merit alone ſhall decide their choice; when the law, to ſecure the impartiality of elections, ſhall exclude from the body of electors indigence, ever to be ſuſpected of venality;§ then will virtue, ſupported in the aſſemblies by hope, by fear, and by morals, invariably obtain a plurality of ſuffrages in favour of the public intereſt; then will the nation be truly free, and conſcious of its freedom; then, in ſhort, will be ſeen the poſſibility

* This would not be inimical to the conſtitution, as it has no concern with the exerciſe of the legiſlative power, in which the prince muſt participate, as one of the three bodies compoſing the aſſembly.

§ By a law paſſed under Henry VI. the citizens, authorized to vote in the election of repreſentatives, muſt poſſeſs a landed eſtate of the annual income of two pounds ſterling: Every one acquainted with the preſent ſtate of England muſt be convinced that even twenty pounds ſterling would be ſcarcely ſufficient to preſerve a private citizen from abſolute penury.

bility of ſubſtituting an aſſembly of citizens in the room of a company of courtiers.*

By

* The preſent ſyſtem of election in England has long afforded cauſe of diſcontent to every diſintereſted and impartial obſerver. If enmity to the genuine ſpirit of the conſtitution, if a total depravation of morals in the lower ranks, if an increaſing hoſt of abuſes and abſurdities can authorize attempts at amendment; the exiſtence of theſe evils in the conduct of modern elections has been clearly but hitherto vainly demonſtrated. In vain has it been ſhewn that the purity of the Britiſh government can alone be preſerved by parliamentary reformation: a meaſure ſo ſalutary ſtill remains to be wiſhed rather than expected. Patriotiſm can ſeldom reſiſt the ſeductions of power. Hence have the people been ſo often deceived by a vain expectation that patriots, metamorphoſed into miniſters, would promote the adoption of thoſe meaſures which in the moment of poverty and virtuous enthuſiaſm they had pledged themſelves to ſupport. Hence has the nation been gradually lulled into lethargy by frivolous objections. The folly of innovation, the poſſibility of danger, have been loudly, but unfairly, adduced as reaſons againſt amendment. The preſent fortunate ſituation of the country has been offered as an unanſwerable argument for the perfection of our government. It has even been aſſerted, that altho' abuſes be proved to exiſt, they ſhould rather be ſupported than removed, leſt the tranquillity of the ſtate be endangered. Should we even allow a doctrine ſo abſurd, it will not be found to militate againſt the meaſure propoſed. For who has yet proved, that in attempting to obtain a conſtitutional end by conſtitutional means, the national repoſe is ſubjected to the ſlighteſt hazard? Who has made it appear, that any dangers to be dreaded by the moſt ſcrupulous ſupporter of the exiſting ſyſtem, are worthy a moment's attention, when contraſted with the benefits which are the objects of our purſuit? Who has yet poſſeſſed ingenuity ſufficient to convince men of cool reflection, that our preſent proſperity (a fact ſo vauntingly oppoſed to innovation) has not been occaſioned by the unſettled ſituation of France, and the critical ſtate of the powers of Europe in general, at leaſt in as great a degree as by the merits of our government? Since, however, our affairs are in a flouriſhing condition, let us ſtrive to enſure their continuance. The moment is peculiarly favourable; let us then adopt a rational plan of repreſentation while it can be done with eaſe and ſafety. From this alone can we reaſonably expect permanent proſperity.

By theſe and ſimilar means, having obviated the influence which the prince might gain over the

The ſtability and welfare of mixed governments are underſtood to depend on the ſupport of a conſtitutional balance, and an oppoſition of ſeaſonable checks to the uſurpations and intrigues of each of the conſtituent bodies. Occaſions therefore will ariſe, which may render it adviſeable either to limit the regal power, obviate ariſtocratic incroachments, or oppoſe effectual barriers againſt the tumultuous inroads of popular influence.

Few men purſue the hiſtory of political eſtabliſhments to their ſource, ſtill fewer minutely trace their progreſs, or cautiouſly compare former periods with the preſent. Were this a conduct generally practiſed, the diſſonance of jarring opinions would ceaſe. The relative perfection, as well of ſyſtems of repreſentation as of every other political inſtitution would be apparent, and all unprejudiced politicians would confeſs that how admirably ſoever the prevailing mode of election might be adapted to remoter periods, it is by no means calculated for the preſent æra.

Since this plan was firſt introduced, by the extenſion of commerce, and a combination of events, population and riches have been inconceivably augmented. New towns have ariſen, of conſiderable magnitude, and old ones have been repleniſhed with inhabitants. The firſt have no repreſentatives; in the latter they continue to be choſen by a few antient voters, who, actuated by love of power, and gratified that the few ſhould accompliſh an election for the many, are often particularly vigilant in excluding from the privilege of voting, that moſt reſpectable numerous and uſeful claſs, the body of men engaged in commercial purſuits, who have ſeldom opportunities of exerting any but an *indirect* influence in elections. If to this circumſtance we add, that many towns ſunk into decay have been deprived of their repreſentation; that it was antiently the cuſtom to grant freehold leaſes of lands, whence the leſſee derived a right of voting, which the leaſes now in uſe have annihilated; that a multitude of opulent and reſpectable perſons poſſeſſing chattel intereſts, who are materially concerned in their country's welfare, enjoy no ſuffrages; we ſhall find, that although population and opulence have increaſed, electors and repreſentatives have diminiſhed. Minutely to enumerate electioneering abuſes, would be a tedious and unprofitable taſk. It ſeems however highly reprehenſible, that voters for cities and boroughs, non-reſidents, who have at moſt a very ſlight intereſt in the

the deliberations of the aſſembly repreſenting the ſovereignty and the nation; the law muſt direct its

the towns where they poſſeſs a voice, who are uſually indifferent to the welfare of the citizens, and have no opportunities of deciding on the comparative merits of the candidates; ſhould be enabled to diſturb and carry elections againſt the wiſhes of the reſident and more enlightened electors.

From the objections already offered, and numberleſs reaſons which remain, it can be clearly proved that the Britiſh repreſentation, in its preſent ſtate, is inconſiſtent with the principles of the conſtitution. It is not what it profeſſes, a real repreſentation of the people. Are the people really repreſented where peers, as well as private gentlemen, have a property in boroughs—where an ariſtocratic influence creates members of the popular aſſembly—where the miniſters of the crown are enabled to abuſe its patronage, and exert every venal art to ſtrengthen the party of their adherents in the lower houſe—where, in ſhort, the reſources of the ſtate are perverted, and the nation ſupplies money to effect its own corruption? Are the people really repreſented, where towns abounding in affluence, and reared by millions of the moſt induſtrious ſubjects of the ſtate (men who contribute in a ſuperior degree to the national revenues), where innumerable renters, whoſe exertions ſupport the agriculture of the country, are conſidered leſs worthy of ſending members to parliament than the wretched remains of indigent and profligate boroughs?

The arguments of writers on legiſlation and every principle of reaſon have been ſet at defiance. Prejudices have been encouraged to ſtrengthen the influence of deſpotic miniſters, and ſecure paſſive obedience. It has been clamouroufly aſſerted, without a ſhadow of plauſibility, that the parliamentary ſyſtem now prevailing is *practically* the beſt poſſible; and that all attempts at amendment muſt have a pernicious, rather than a ſalutary tendency. On a remark ſo dangerous and abſurd, it has been ſuggeſted to the tranſlator that ſome obſervations ſhould be offered.

The only end of legiſlation is to promote the public good by the beſt means the nature of the government will admit—a principle generally received. Is the mode of repreſentation in England conſiſtent with this principle? We elect repreſentatives to participate in enacting laws, and by voting ſupplies to ſupport the executive power; to watch over the conduct of miniſters and cautiouſly examine whether the national reſources be applied to beneficial purpoſes.

its views to the laſt vice of this government, the inconſtancy of its conſtitution.

It

purpoſes. To theſe repreſentatives we confide our fortunes and our liberties; imagining they will uniformly protect both. Let us examine whether the conduct of our delegates, under the modern ſyſtem, authorizes this expectation. On ſoliciting our ſuffrages they promiſe maturely to conſider every law propoſed before they ſanction its execution; they promiſe to be cautious in granting only ſuch ſupplies as are really neceſſary: they promiſe to vote no money for corrupting the ſtate, or ſubverting the morals of the people, no penſions for pampering the vices of the great, or promoting a thoughtleſs profuſion in our rulers. Once in ſeven years are engagements like theſe reiterated—once in ſeven years, deluded by flattering promiſes, we imagine we enjoy a perfect repreſentation: but alas! after the election is effected, theſe engagements are forgotten, and the care of preſerving the beſt practical ſyſtem of mixed government poſſible is reſigned to the *executive* power!

It is not neceſſary to enter into a detail of the intrigues of parties, for whoſe ſupport intereſt and ambition have been ſo often allied. We may content ourſelves with obſerving, that the *miniſter* is ſeldom deſerted: *his* party ever predominates. Whether he promote meaſures beneficial or ruinous, his influence inſures a majority in the lower houſe: nor can he loſe his ſupport until the nation becomes indignant at his miſconduct—then, perhaps, he conſiders it prudent to reſign; but his reſignation does not prevent the pernicious conſequences of that conduct which endangered the public ſafety, and occaſioned the interference of the people.

Were the members of the houſe of commons fairly, equally, and, as much as poſſible, incorruptly choſen, were no preferments to be accepted, no places to be filled, no penſions received by the popular delegates, directly or indirectly; the conduct of parliament would be reverſed. Having no compenſations to expect, the members would unite with their conſtituents in a common intereſt. Abſurd laws, oppreſſive ſtatutes, and exorbitant taxes would then be felt by them as well as by the people they repreſent. But while the executive power poſſeſſes an unconſtitutional influence, and in effect *alone* legiſlates for the nation, its miniſters will naturally ſupport meaſures which ſtrengthen this influence, and enſure the obedience of the people. In impoveriſhing the ſtate by enormous expences, they will enrich themſelves: oppreſſion will afford them an accumulation of patronage. Trifling retrenchments will occaſionally

It has been obſerved, that the right of partially or entirely changing the laws which determine the conſtitution, cannot be taken from the aſſembly without deſtroying the nature of the government. We muſt therefore deviſe ſome means to render the exerciſe of this right difficult; which may be obtained by a determination, that whenever the changing, aboliſhing, or framing of a fundamental law becomes the ſubject of debate, a majority of ſuffrages ſhould not be ſufficient to authorize the novelty propoſed, but a plenitude of votes ſhould be required, to render it valid and legal. This remedy would not deprive the aſſembly of a right that ought on no account to be ſacrificed, but would nevertheleſs protect the conſtitution from thoſe viciſſitudes which render it dangerous and inconſtant.

ſionally be made to delude the people, but dangerous and radical abuſes will be ſuffered to ſubſiſt.—Miniſters the moſt virtuous always find ſo many friends to gratify, ſo many enemies to reconcile, ſo much ſelf-love to renounce; that the mighty bulwark of corruption muſt ever remain unſhaken, until the multitude of ſubjects unrepreſented, deaf to ſophiſtry and intereſted clamour, have reſolved to purſue a prudent and conſtitutional conduct for obtaining a reform. Offering repeated requiſitions to the legiſlature, peaceably, yet firmly demanding elective rights, let no party ſpirit actuate their addreſſes, let the public good be their ſole object; and government muſt at length yield to their wiſhes. Then will their patriotic exertions reſcue the crown from the turbulence of party, and the nation from miniſterial oppreſſion.

In a country where the people pay for the corruption of adminiſtrations, parliaments, boroughs, repreſentatives, nay, for the very depravation of their own morals, the conſtitution muſt ſurely be weak in theory, or defective in practice.

The government of England, notwithſtanding the author's ingenious objections to its eſſence, is admirably adapted in *its theory* to

inconſtant. To combine the wills of all the members compoſing the aſſembly, is ſo arduous an expedient that it can never ſucceed unleſs the advantages expected from the novelty propoſed be too apparent not to be univerſally deſired, too evident not to be univerſally acknowledged: in ſuch an event the conſtitution would be rather perfected than changed. This is the only inſtance where the *liberum veto* might become ſerviceable in a republic.§

Such are the remedies which a wiſe legiſlation might oppoſe to the inherent defects of this ſpecies of conſtitution, and ſuch the principles derived from the relation of laws to the nature of mixed governments. My opinions I truſt have been ſufficiently

to the ſpirit of the people: the evils we have enumerated certainly originate in *practical* abuſes, utterly inconſiſtent with the ſpirit of the conſtitution, which might be removed by ſeaſonably adopting a well-digeſted ſyſtem of parliamentary repreſentation. In times of national poverty or popular diſcontent, a meaſure of this kind could not be attempted without danger. In the preſent moment of peace and ſecurity it might be effected with eaſe.

That electors and repreſentatives ſhould be increaſed cannot be doubted; but this note is already extended to a length ſo unuſual that the ſuggeſtion of a connected ſcheme of reform would here be impracticable. Should exiſting defects continue unrepaired, the tranſlator may at ſome future period ſubmit his thoughts on this ſubject to the public more at large. He has no wiſh of deſtroying the harmony of the conſtitution, by giving the people a dangerous influence. He has already obſerved, in a former note, that the regal dignity ought to be preſerved in all its ſplendor; that the prerogative of the crown in excluſively creating peers ſhould remain inviolable, as the beſt expedient for enſuring the vigor of the executive force: but ſurely no true lover of his country can be averſe to amend a repreſentation deſtructive of popular virtue, inimical to the purity of the conſtitution, and dangerous to its ſtability.—T.

ficiently elucidated;* but muſt I ſet bounds to my reſearches with remorſe at having ſhewn little deference to a nation which above all others is entitled to reſpect?

No, philoſophers of Europe, venerable Engliſhmen, be not offended at the freedom with which a man who reveres, who admires you, dares to ſpeak of your government. I only ſeek your cure, in laying open your wounds.

Reflect with ſhame that while you have enlightened, inſtructed, ſurprized Europe with your inventions, with the perfection of your productions, and

§ To enſure the vigour and duration of this moſt intereſting eſtabliſhment, it would be neceſſary to introduce a new form of oath, by which each member, on the opening of parliament, ſhould promiſe neither to propoſe nor give his vote in favour of any motion tending to the revocation of this law. It would alſo be neceſſary to frame a ſmall ſeparate code of real fundamental laws, determining the true nature of the conſtitution, and the rights and limitations of the authority of each of the three bodies, which might neither give room for interpretation nor ambiguity. In this code ſhould be contained real fundamental laws alone, and not thoſe on which this appellation has been abuſively beſtowed.

* I have not ſpoken of the right of taxation, laying on new impoſitions, or granting ſupplies. The nature of the government gives this right to the aſſembly repreſenting the ſovereignty, whence it cannot be taken without deſtroying the conſtitution. But from what has been ſaid, it may be obſerved that this *palladium* of the liberty of mixed governments is of no utility, while the defects of which we have ſpoken, continue. Of this the preſent ſituation of Great-Britain is an inconteſtible proof. What avails it that the king cannot impoſe new contributions or tax his ſubjects, when he has the means of effecting theſe purpoſes through the parliament as inclination dictates.

and your intereſting diſcoveries, you have at the ſame time ſo ſhamefully neglected your legiſlation. A compoſition of the moſt ſhocking abſurdities the barbariſm of your anceſtors could ſuggeſt, of all the feudal ſyſtem contained moſt extravagant, and moſt contrary to that liberty of which you think yourſelves in poſſeſſion; of ſo many uſages and cuſtoms with the very origin of which you are unacquainted; of ſo many new laws contradicting old; of ſo many deciſions of tribunals with the force of law; of ſo many uſeful decrees joined with ſo many pernicious edicts; of ſo many evils and ſo many remedies; of ſo many guards of independence, and ſo many ſuccours of deſpotiſm.—Offering to the eye of the philoſopher an aſſemblage of confuſion from which the defects of your conſtitution can never be remedied, nor the continuance of your liberty enſured. Let your abilities then at length be directed to this ſublime work. Frame a new ſyſtem of laws, in which the vices of your conſtitution may be repaired; all the rights both of the crown and the parliament ſettled, all antient uſages, incompatible with the preſent ſtate of affairs, aboliſhed: impreſs it with that unity, which a legiſlation framed during ſo many ages, under ſo many different circumſtances, in ſo many different periods of your ever changing, ever reforming, but never perfected conſtitution, cannot poſſeſs: availing yourſelves of its influence, recall to your country virtue—without which there can be no liberty; morals—without which there can be no patriotiſm;

patriotiſm; education—without which there can be be no morals. By rewarding zeal, by puniſhing fraud and *court-intrigue*, by rendering the members of parliament incorruptible from intereſt as well as principle, ſubſtitute a freedom ſound and permanent for a precarious and dangerous licentiouſneſs, the fore-runner of anarchy and deſpotiſm: ſeek, in a word, what is not impoſſible to be obtained, what your enthuſiaſm for the public good, joined with the ſolidity of your talents, will even effect with eaſe—ſeek, I ſay, to conciliate in one code, liberty, peace and reaſon. Then will no ray be wanting to the ſplendor of your glory.*

* The following parts compoſe the preſent juriſprudence of England: 1. The combined law of the Anglo-Saxons and the Danes, collected by Edward the Confeſſor and augmented by William the Conqueror: this is called the *Common Law*. 2. The *Parliamentary Deciſions*; theſe are comprehended under the name of *Statutes*. 3. The *Charters of Cities*, which are called Private Laws. 4. The *Foreſt Laws*. 5. The *Military Laws*, operating only in time of war. 6. The *Roman Law*, uſed in the Admiralty Court. 7. The *Canon Law*, followed by the clergy in all caſes not repugnant to the authority of the king and the laws of the realm.

From what has been here mentioned, we may conclude that the Engliſh juriſprudence has nothing to yield in point of confuſion and multiplicity to the reſt of Europe.

CHAPTER

CHAPTER XII.

Second Object of the Relation of Laws: the Principle which ſtimulates the Citizen to Action in different Governments.

BEFORE we enquire into the characteriſtics and rules derived from this relation, the nature of the abovementioned principle muſt be aſcertained. Under every form of government, ſays Monteſquieu, the ſtimulus to action differs. "Fear in deſpotic ſtates, honor in monarchies, virtue in republics, conſtitute theſe different motive principles."

But on what proofs, ſays a celebrated obſerver,† does Monteſquieu ſupport this ſyſtem? Are fear, honor, and virtue, really the exciting powers in different governments? Could it not, on the contrary, be made appear that a ſingle cauſe, variouſly directed, is at once the ſource of exertion in all governments, and that this cauſe is, *love of power?* If it be true that love of pleaſure and dread of pain are the ſprings which regulate human actions, we ſhall be eaſily perſuaded that in every government the real principle of activity originates in *love of power*; ſince this love of power is itſelf generated by love of pleaſure. Every one deſires

† *Helvetius de l'Homme, &c. Sect.* 4, *cap.* xi. From the multiplicity of writers who have confuted Monteſquieu's ſyſtem, I am induced here to ſupport my own, without a thought of reſiſting *his* hypotheſis.

deſires the higheſt degree of happineſs poſſible, every one, therefore, wiſhes to poſſeſs a right of obliging other men to contribute all their ſtrength to his felicity, and conſequently wiſhes to command their ſervices. This paſſion is born with man, and being inſeparable from his nature, is rendered more active by the developement of ſocial relations, and is become the true and common ſtimulus to exertion in all civil ſocieties, whatever may be their particular conſtitution. I might prove this truth to a demonſtration.

But ſuch a demonſtration would be uſeleſs. I write neither for hermits nor for obſcure miſanthropiſts: I write for thoſe who live in the midſt of cities, and who every moment may perceive in themſelves the true cauſes which incite them to action. Every one who reads may judge without need of other proof. Let him examine his heart, let him analyze his wiſhes, and then if he have boldneſs enough, let him aſſert that this ſyſtem is erroneous. But it may be urged, how can the ſame principle poſſibly operate with equal force in all governments, ſince their natures are ſo different? This objection will be ſufficiently obviated by an attention to the following ſtatement. —In every nation the ſupreme power is either poſſeſſed by an individual or by a certain portion of citizens, or it is diſtributed amongſt the nation at large. Relatively to theſe different diſtributions of the ſupreme authority, it muſt appear clearly, that although under different governments the citizens

contract different habits and cuſtoms, they may nevertheleſs all propoſe to themſelves the very ſame object of purſuit,—pleaſing the ſupreme power, rendering it propitious to their deſires, and thus obtaining ſome portion or emanation of its authority.

The means are always ſimilar, yet the effects are different. The ſame love of power which in a free and well-regulated republic renders the citizen attached to virtue and to his country, tends to make him a monſter under a deſpotic government. At the ſame period that it gives birth in Rome to a Curtius, a Decius, a Fabius; in Aſia, it produces the vileſt of ſlaves. From this principle, in the ſame country, but at different ſeaſons and under different circumſtances, will ariſe a Cincinnatus, a Papirius, a Cleander, a Perennis, and a Sejanus.

Having premiſed theſe general remarks, we ſhall ſoon perceive that every effect which Monteſquieu attributes to *his* principles, is in fact the reſult of the ſame love of power conſidered relatively to different governments.

For example: where there is a deſpotiſm, (ſays he) there is no virtue. I grant it; but why?—Becauſe when the government is purely arbitrary, when the ſovereign authority is in the hands of a tyrant, too often educated within the walls of a ſeraglio, amid the intrigues of a troop of greedy and corrupt courtiers, he will certainly chuſe for his miniſters none but the accomplices, or at leaſt the cheriſhers of his vices. In ſuch a country neither

neither an Ariſtides nor a Cimon will ever appear, becauſe they can derive no aſſiſtance from virtues or talents to favour their attaining a portion of that power which is but an emanation from the authority of the moſt corrupt of mankind. In ſuch a country, vice, indecency, debauchery, libertiniſm, ſhameful voluptuouſneſs, oppreſſion, injuſtice, rapine, fraud, and meanneſs, are honoured, approved, authorized, and rewarded by the ſupreme power, applauded by the public voice, and, as it were, legalized by the tacit conſent of a ſociety too ſpiritleſs for reformation. There, the favorite is above fallibility: there, the betrayer of his country becomes the moſt powerful citizen of the ſtate: there, thoſe who are not oppreſſors are oppreſſed: there, the virtuous man ſtrives to conceal his virtues: there, in ſhort, the moſt courageous labour to appear the moſt vile, becauſe valour and virtue are as nought where deſpotiſm is all.

For the better developement of my idea, I ſhall have recourſe to a political phenomenon. Let us ſuppoſe that a deſpot, yet a man of virtue, ſhould aſcend the throne. In an inſtant you will obſerve a change in the face of affairs. Every one will ſtrive to render himſelf uſeful to the public, and will exerciſe all the arts of ambition to merit, or at leaſt appear deſerving the employments to which he aſpires. It muſt be allowed, that the wiſh of pleaſing the tranſient hero who wears the crown will create a number of hypocrites, becauſe

virtue cannot yet be firmly rooted; but this hypocriſy is itſelf a glorious and uſeful homage, which vice pays to virtue, by aſſuming her appearance. The man of probity will rend the veil which concealed his merits, and he who was before vicious will attempt to become, or at leaſt wear the ſemblance of a contrary character. Thus has virtue occaſionally honoured the ſeat of deſpotiſm itſelf. Thus in Rome did Trajan and the two Antonines alter the aſpect of affairs.

By *love of power* then, is the citizen really determined to action, and by the ſame paſſion, in free and popular governments, is he rendered virtuous.

Where the people reign, deſpotic power is centered in the nation at large, which muſt neceſſarily deſire the good of the majority: ſo that here, by public ſervices alone, is the citizen placed in a ſituation of obtaining a proportionate degree of authority as the reward of his deſerts. In theſe governments love of power will neceſſarily endear him to juſtice and his country. It is well known that in Rome, during many ages, prodigies of valour were ſeen united with prodigies of virtue; and every citizen poſſeſſed the qualities of a Fabricius, a Regulus, and a Cincinnatus. But how long did theſe prodigies continue?—As long as valour and virtue continued to be the meritorious means of obtaining the conſulate and dictatorſhip. But ſcarcely had freedom yielded her ſeat to tyranny; ſcarcely had the Prætorian guard and the legions begun to decide on the merit of thoſe who were to command

command the earth; ſcarcely had an infamous commerce of employments and crimes been introduced into the capital, before virtue, no longer profitable, diſappeared:—Heroes were converted into ſpies: the ſenate itſelf became inſtruments of the ſuſpicions and enmities of a tyrant; and, to ſum up all in few words, a country exiſted no longer in the univerſe, for which it was the duty of its inhabitants to entertain the higheſt reverence and affection.§

We may therefore conſider it a general rule that in every government the citizens will act conſiſtently with the character impreſſed on their minds by the love of power.* It is the province of the law to direct this paſſion, in order to promote its utility.

§ In the hiſtory of the Barbarian nations that iſſued to overwhelm Europe, we have too lively a picture of Roman degeneracy. Whenever we wiſh to inſult an enemy, ſays Luitprand, and give him an odious appellation, we call him a Roman: *Hoc ſolo, id eſt quidquid luxuriæ, quidquid mendacii, immo quidquid vitiorum eſt comprehendens.*—Luitprand. Muret. ſcript. ital. vol. 2, par. 1, p. A vi.

* I allow, that even in thoſe governments where the love of power prompts the citizen to vice, there may yet be ſome men of probity who prefer the ſecret delights of virtue to the ambitious wiſh of ruling by vicious means. Whilſt Cataline with his furious accomplices was condemning to death one who with the ſpirit of a Roman had dared to prefer the welfare of his country, Titus Labienus lived a citizen, a man of probity, a hero. And whilſt Cæſar on the ruins of liberty was laying the foundation of the ſevereſt tyranny, Cato harangued the people—fled to Utica,—ſlew himſelf with his own hands, that he might not ſee his country deprived of her antient liberty. But theſe and ſimilar exceptions cannot ſubvert a general rule, ſince not two only, but even a hundred honeſt citizens are of inconſiderable importance when placed in competition with a public, entirely depraved and corrupt.

But ought the direction to be uniform in all governments? Such an uniformity can never be practicable. The effects of this ſingle and general principle differing according to the variation of the governments on which it operates, the direction given it by the laws muſt alſo differ. This is a ſubject which I haſten to elucidate with preciſion, ſince all that I have hitherto obſerved would appear foreign to my argument, (having undertaken to treat of the law's relation to that principle which animates governments,) ſhould I develope the rules derived from this relation without previouſly determining the principle to which it applies. I ſhall begin, therefore, with democracies.

In democracies the law ſhould reſign to the people the choice of their magiſtrates and miniſters, as the moſt efficacious method in ſuch governments of rendering love of power the fertile ſource of exemplary virtues and ſplendid deſerts. The public at large is not eaſily deceived or corrupted. The connection which may unite a citizen to the members compoſing a ſenate muſt be infinitely cloſer than any relation he can have to the whole body of the nation. Without a conſiderable degree of merit, expectations from the ſenate may be encouraged, yet nothing is to be hoped for from the people. Of this truth the hiſtories of Rome and Athens offer me a proof. We are informed, that after the Roman people had with great tumult obtained the right of raiſing plebeians to employments,

ments, they could not yet come to a reſolution of electing them;† and that in Athens, although by a law of Ariſtides magiſtrates were eligible from all the claſſes, it never happened, ſays Xenophon,* that the lower orders called for perſons who might ſeem to have a particular intereſt in their welfare and their glory. From popular elections another benefit accrues. The people do not examine into private abilities or ſecret virtues,—in ſuch a reſearch they might be deceived. They determine only, ſays Monteſquien, on things of which they cannot be ignorant, and facts which come under their own obſervation.

They know, for example, that a man has been often employed in war, has courageouſly defended the rights of liberty and of his country, and has ſucceeded in one or more enterprizes; this

† The people requiring that the plebeians alſo ſhould be admitted to the conſulate, for appeaſing them it was eſtabliſhed that four tribunes ſhould be created with conſular power, who might be indiſcriminately plebeians or patricians. When the election of theſe tribunes took place, they were all choſen from the claſs of nobles. Whence Livy ſays, *Quorum comitiorum eventus docuit alios animos in contentione libertatis et honoris alios ſecundum depoſita certamina in incorrupto judicio eſſe.* The expedient is well known which Pacurius Calanus adopted in Capua to ſtifle a ſedition on the eve of breaking forth in that city againſt the Senate. Machiavel, after having minutely deſcribed the event, deduces this great truth: that if the people are ſometimes deceived in the general, they are never deceived in the detail; that they weigh in a juſt ſcale the merits of thoſe to whom they entruſt any employment, and are ſeldom deceived in the judgement they form of perſons. —See his *Diſcourſe* on the *firſt Decade of Livy.*

* Xenoph. pag. 691, edit. Wechel. ann. 1596.

is ſufficient to entitle him to the command of the troops.

They know that a judge is aſſiduous—that many return from his tribunal ſatisfied with his deciſions, that he has never been convicted of corruption—this is enough for inducing them to elect him Prætor.

They know, in fine, that a citizen is wealthy, they obſerve his magnificence:—this man, they ſay, muſt be Edile. Thus is every citizen aſſured, that to obtain any portion of authority he muſt conciliate the eſteem of the people, and to accompliſh this muſt ſerve them; to make his talents known he muſt exert their influence and diſplay his virtues, by uſeful actions and public ſervices. Hence do heroes ariſe; hence did the celebrated Penn—an habitual philoſopher, a man worthy to have lived in thoſe ages when men were poor but great: a legiſlator, who had he been born twenty centuries before, would have obſcured the glory of Lycurgus and Solon: hence, I ſay, did Penn render Pennſylvania (that region of America, fortunate becauſe deſtined to obey a man who had abandoned his own country only to be the better capable of diſplaying the firſt traits of benevolence and humanity in a new hemiſphere) the country of heroes, the aſylum of liberty, and the admiration of the univerſe.

He was aware that the great object of legiſlation is to unite private with public intereſt; he ſaw that in free governments, the only method to ſuc-

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ceed in ſuch an enterprize was reſigning to the people the diſtribution of employments. He purſued this conduct, obtained his end, and ſettled the foundation of a republic, which now attracts the attention of the whole earth. And philoſophy will immortalize the memory of him who firſt tranſported felicity to America, at a period when all Europe ſeemed combined to overſpread her regions with nought but wretchedneſs and ruin.

In free governments, the firſt law for protecting, regulating, and rendering uſeful the love of power, muſt reſign to the people at large the election of thoſe to whom any portion of authority is to be entruſted: the ſecond muſt yield to every citizen a poſſible right of attaining the higheſt employments of the ſtate, unleſs excluded by ſome crime, which ought clearly to be defined. The neceſſity of this law is ſelf-evident: it is a natural reſult of the foregoing principles. If the citizen ſerve his country with an eagerneſs proportionate to the advantages ſhe offers him in return; if in the love of power all his hopes be centered; if the different degrees of authority which may be conferred on him, be the only coin he will accept in payment for his ſervices; we muſt conclude, that whenſoever one portion of the citizens is entirely or partially excluded this right, the republic becomes inſtantly divided into two claſſes: thoſe who have either no concern or a very inconſiderable ſtake in their country's welfare, and

thoſe

thoſe whoſe intereſt is wholly centered in the ſervice of the ſtate. Every man muſt perceive how much this civil partiality counteracts the principle of government, and prevents an equilibrium by deſtroying equality, not that metaphyſical equality ſo ardently ſought in the reveries of politicians, but an equality which is the ſoul of popular governments, an equality whoſe object is not powers but rights, and in which any abuſive alteration tends to place the ſlave on a level with the hero, and to raiſe a troop of Helots in a country of Lacedemonians. Laws therefore conceding an equal right of attaining employments to every citizen, is one of the moſt neceſſary regulations for protecting, exciting, and directing the principle of democratic governments.

The laſt expedient adapted to promote the ſame end, is a law to prevent the abuſe of power. An abuſe which is too often united with the power itſelf, is univerſally pernicious, is particularly fatal in free and popular governments, and muſt be obviated by the legiſlature.

To this end the *oſtraciſm* among the Athenians was directed. It was attended with a double advantage. It prevented the abuſe of power by baniſhing thoſe citizens, who, from the authority they had acquired in the ſtate, were become ſuſpicious: and protected, at the ſame time, the principle of government; becauſe, as it is not power alone which is ſought after but the reputation of power, the citizen imagined he had ſuffi-

ſufficiently attained this flattering diſtinction, when his merit had cauſed him to be baniſhed from his country. Thus did the oſtraciſm in Athens operate as a reward; and thus might a wiſe legiſlature by directing the paſſions of men, change their very nature, ſo as even to make them wiſh a deprivation of objects the moſt dear to them, their parents, their friends, nay their country itſelf.

But without having recourſe to an oſtraciſm, which at firſt glance ſeems a violent and tyrannical expedient, the legiſlature might make the love of power itſelf operate as a prevention of its abuſe.

Let the law define by what path the firſt poſts are to be obtained and the duration of each magiſtracy; let a certain aſcent or gradation be ſettled; let the exerciſe of one employment ſerve as a kind of probation, or as an opportunity of meriting ſome higher office: but let an interval always elapſe betwixt each employment: during this interval, (which muſt never be diſpenſed with), let the magiſtrate whoſe office is expired, be reduced to a private ſituation, ſo that the citizens may be enabled to accuſe him without apprehenſion. Let a tribunal be eſtabliſhed for receiving accuſations againſt any of theſe magiſtrates, for examining into their conduct and reporting it to the people: then will it be ſeen whether without the aid of an oſtraciſm the love of power itſelf may not operate to prevent its abuſe.

The laws which have been juſt conſidered, are calculated to protect and conduct the love of power

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in popular governments. We muſt now conſider thoſe which tend to protect this principle under an ariſtocracy. An ariſtocracy, it has been obſerved, is with reſpect to the nobles what a democracy is with regard to the people: the choice therefore of thoſe to whom any authority is to be entruſted muſt be made by the general body of the nobles for the ſame reaſon that in democracies it muſt be made by the people at large. Thus will merit have a greater influence on the diſtribution of employments; and the love of power will become uſeful, becauſe it will oblige the citizen to juſtice, and to the ſervice of his country.

But ſince in theſe governments the nobility is all and the people are as nought; ſince the whole power is in the hands of the patricians; by what expedient can we excite the people to co-operate for the good of their country?—to what object can the love of power be directed in this inſtance, except to an entire demolition of the ariſtocracy and an overthrow of that abominable and humiliating diſtinction between the rights of one citizen and thoſe of another; between the rights of the nobles and the privileges of the people? Yet this evil, which muſt ever render ariſtocracies the worſt of all governments, and the moſt ſubject to civil diſcords, may be remedied. The law, without injury to the nature of this government, might appeaſe the people, and intereſt them in the public welfare by two methods: by leaving the path open to certain ſubaltern offices, and by yielding every citizen a poſſible

a poſſible right of being inrolled in the claſs of nobles when certain circumſtances and certain merits, which ſhould be accurately defined, are found united in his perſon. This expedient is attended with a double advantage: it foſters and directs the principle of government among the lower orders, which, deſtitute of this hope, could have no intereſt in ſerving their country; and places at the ſame time a barrier againſt the frenzy of the people; becauſe the moſt powerful and reſpectable citizens of this claſs, ſeeing themſelves already approaching, or at leaſt in a ſituation of being one day incorporated in the rank of nobility, muſt diſcover their own intereſt in defending its rights. Thus in Rome did the patricians ſometimes find a defender of their cauſe in the tribune of the people.

I ſhall terminate this Chapter with offering ſome hints on the mode proper to be adopted by the laws for protecting the love of power in monarchies.

In theſe governments every portion of authority entruſted to the citizen is a mere emanation of the ſupreme power depoſited in the monarch. It is the ſovereign who has the gift of employments; who diſtributes the various portions of authority among his ſubjects. So that a citizen in theſe governments, influenced by love of power, will propoſe to himſelf no other object than contributing to the ſatisfaction of his ſovereign, in order to conciliate his favour, and thereby obtain from him ſome degree of power as a recompence for ſervices performed. But as this motive, under the

government

government of a good prince, may be the means of producing heroes for the ſtate, ſo under the empire of a weak and depraved monarch, it may tend to overwhelm the nation with flatterers and ſlaves. How then muſt the law act for preventing this evil, and giving a ſafer and more uſeful direction to love of power in monarchical governments. Depriving the ſovereign of the diſtribution of employments would be an infringement of his rights, and a violation of the conſtitution. Submitting this diſtribution to the approbation of the public at large would be impracticable and unworthy the dignity of the ſovereignty. The only expedient at once uſeful to the ſtate and by no means injurious to the rights of the ſovereign, would be an allotment of certain offices to thoſe citizens who ſhould perform certain ſervices for their country, defined and determined by the law; and an accurate ſtatement of the merits required for attaining thoſe employments which might remain undiſtributed. By this ſingle eſtabliſhment has the national proſperity been for ages ſupported in a country where every virtue receives ſome emolument, and every uſeful talent acquires ſome authority: where nobility is not merely an hereditary memento, but a perſonal reward; where he who poſſeſſes ability and virtue is aſſured of being preferred to him who can boaſt only an illuſtrious anceſtry; where it is neither the will of a prince, the partiality of a courtier, nor the cabal or intrigues of a court—but where the law diſtributes

employments,

employments, offering them as objects of emulation to the citizens at large: where the law aſſigns them not to the perſon, not to the rank, but to uſeful and virtuous actions. I ſpeak of China, a country where by theſe expedients family order is preſerved throughout the largeſt empire on earth; where on principles like theſe the laws animate and direct that ſole and univerſal principle of every government, love of power.*

The moraliſts here, as well as in every other country where ſound principles of morals and philoſophy are received, condemn not in man the ambition of ruling unleſs it be joined with the wiſh of oppreſſing. Love of power aſſumes, we may be aſſured, different appearances: in a great ſoul that feels itſelf capable of promoting general happineſs, it is a virtue. It is a vice in thoſe who know only the art of doing injury.

The man of ambition in a free government is an honourable citizen deſirous of employments, as the lawful means of gratifying himſelf by contributing to the happineſs of others: under a tyrant, he is a cunning ſlave who ſeeks to extricate himſelf from the claſs of oppreſſed to enter that of oppreſſors.

Under a moderate government, where a legiſlation has found means to direct this paſſion, the ambitious man is a patriotic character, who deſires only

* On the ſubject of mixed governments, I refer the reader to the preceding Chapter, where I have ſhown by what means the law might intereſt the citizens in the public welfare, by directing this univerſal principle of action.

only authority ſufficient for enabling him to enforce an obſervance of the laws, defend his country, maintain her rights, preſerve her liberty, and thereby conciliate the eſteem and gratitude of his fellow citizens, who cannot avoid contributing to his felicity. Under a deſpotic government he is a monſter who wiſhes to enjoy the abominable privilege of violating with impunity every rule of juſtice, deſpiſing the laws, trampling on the unfortunate, oppreſſing his country, and adding new weight to her chains.

Let not morality then continue inimical to ambition and love of power, but rather oppoſe thoſe governments and thoſe laws which are incapable of giving a proper direction to its influence. Deſtitute of this ſpring, ſociety would be without motion: political bodies would periſh in inactivity. When ill-directed, this ſtimulus occaſions a movement in ſociety, a movement, however, that accelerates its ruin. On the contrary, when under due regulations, the ſtate ſupplied with heroic ſpirits moves on with increaſing vigour, and is ever making nearer approaches to perfection.

From the principle which animates governments, I proceed to conſider the genius and diſpoſition of mankind.

CHAPTER

CHAPTER XIII.

Third Object of the Relation of Laws—the Genius and Diſpoſition of Mankind.

THE genius and diſpoſition of mankind, may be conſidered in two points of view: with reſpect to that univerſal ſpirit, by which in every age the greater part of nations are actuated; and with relation to the peculiar nature and diſpoſition of the people, for whoſe uſe the laws are promulged. Under whatever aſpect we examine the ſubject, its application to the ſyſtem of juriſprudence muſt be apparent. I ſhall firſt ſeek to demonſtrate how this ſyſtem is influenced by the univerſal ſpirit of the times; and then conſider the genius and particular diſpoſition of the people for whom it is intended.

The inconſtancy which accompanies every ſubject dependent on human nature, is viſible in the difference of national character at different ſeaſons. The ſpirit of the age changes with the circumſtances that concur in its formation; and the viciſſitudes which time occaſions in phyſics, occur alſo in politics and morals. Should legiſlation then treat theſe ſubjects with neglect?

We may be ſatisfied on this point, by directing our attention to the hiſtory of times and nations. In what do we reſemble the antients? What has our genius or diſpoſition in common with theirs? Where is that eagerneſs for war and conqueſt? Where that

martial ſpirit which filled every breaſt, armed every nation, and changing even the ſentiments of nature, made life leſs dear, and death leſs dreadful? Where are thoſe prodigies of valor and virtue? Where thoſe games, at which the Greek and Roman exhibited their ſtrength and activity before immenſe multitudes, at which by rewards and acclamations the lively ſentiments of glory were foſtered, at which pleaſure herſelf paid a tribute to ſtrength and courage? This ſtrength and this courage are now become unavailing. Men fight without making cloſe approaches, and die without diſtinguiſhing by whom they are ſlain. A combuſtible, ſulphureous, and elaſtic matter levels the ſtrong with the weak, and the hero with the coward. The very objects of war are changed. Heretofore nations armed to deſtroy or found kingdoms, or to vindicate the natural rights of mankind. We now fight for taking a port, for the conqueſt of a mine, for the monopoly of a merchandize, or for ſatisfying the caprice of ſome man in power. Theſe wars being uſually carried on at a diſtance, or on the expanſe of the ocean, are much leſs felt. Thoſe proſecuted on land are ſlow in their progreſs. Our anceſtors, without the intervention of a mercenary ſtanding army, were in a continual ſtate of warfare—while we, in a ſtate of peace, are ſurrounded by a million and two hundred thouſand men continually armed. The ſpirit of trade and commerce pervades the earth, and nothing is attended to but preſerving peace and acquiring wealth. We muſt all perceive what a

difference

difference of principle this aſtoniſhing revolution muſt unavoidably produce in the legiſlative ſyſtem? What would now be the fate of a republic whoſe laws, like thoſe of Sparta, ſhould baniſh gold and ſilver, prohibit navigation and commerce, depreciate agriculture and the arts, and annex a certain character of infamy to the exerciſe of trade;—trade, which once contributed ſo much to the decline, but is now become the ſupport and the ſoul of nations? With ſuch laws, what would be the fate of England and of Holland? Amſterdam and Rotterdam would then be in the Northern ſea, what Tunis and Algiers now are in the Mediterranean; what the Danes, and antient people of Norway were; what the greater part of barbarous nations placed by nature on the ſea ſhore, have ever been: they would be two piratical republics, obliged to have recourſe to injuſtice and fraud for their ſubſiſtence; they would be poor, becauſe piracy has never enriched any people; they would be always in a fluctuating ſituation, becauſe always expoſed to the vengeance of neighbouring powers. Whereas by a contrary ſyſtem of juriſprudence, by tranſporting to every kingdom the treaſures of nature and of art, by conveying to the one the ſuperfluities of the other, they reign ſuperior wherever the ſea has an influence, and grow rich with the conſent of the people whoſe happineſs they increaſe, and whoſe wants they multiply.

Let us for a moment call to our recollection the principles adopted by the antients, and let us con-

traſt them with the opinions of modern politicians. Plato directed that the arts ſhould not be brought to perfection,* and that none ſhould be exerciſed in the republic but thoſe eſſentially neceſſary to life. He refuſed giving laws to the Arcadians and Coroneans, being convinced that theſe people were at once opulent and enamoured of opulence. Phocion aware that Athens owed its decline to wealth, directed that artiſts ſhould be conſidered in the light of ſlaves, and conſequently debarred the privileges of citizens.

The politicians and hiſtorians of antiquity have all attributed the decline of nations to the wealth inſinuated among the people. The laws of Lycurgus, which kept riches at a diſtance from the walls of Sparta for the longeſt period of time, were by them conſidered as the ſummit of politics, as the model of a perfect legiſlation.

Perſuaded of the vices which accompany wealth, of the inſtruments of corruption and ſlavery which opulence and luxury offer to deſpotiſm, perſuaded, in a word, of the beneficial effects of poverty; they commiſerated the ſituation of Solon, who, in giving laws to the Athenians, was obliged to ſwerve from theſe principles: they have informed us, he was himſelf acquainted with the defects of his ſyſtem, when he declared that *he had not*

* He allowed but one day for executing the pictures conſecrated in the temples of the deities, and granted the ſculptors but five for conſtructing a tomb. That we may be ſatisfied of the general concurrence of the antients on the ſubject of wealth, we may conſult Plutarch's Life of Pericles, and Seneca's Letters, 8, 17, 94 & 15.

not dictated to the Athenians the beſt laws, but the beſt which they were in a capacity of receiving.

Such was the opinion of the antients on this ſubject: ſuch was the ſyſtem of Grecian and Roman policy, whoſe great object was the preſervation of frugality by poverty; and by frugality, ſtrength, courage, ſupport of fatigue, and ſtrictneſs of morals. Let us now turn our attention to the moderns. Far from conſidering poverty a benefit, our politicians are only anxious in the purſuit of riches and treaſures. Their wiſhes are bent on the improvement of agriculture, arts, and commerce. They ſay to the people, be rich if you would be happy. They ſay to ſovereigns, let your ſubjects poſſeſs a conſiderable ſuperfluity, if you would be reſpected abroad and tranquil at home. Your crown will be ever ill-ſupported, your throne will be ever tottering, your provinces ever expoſed to the rapacity of neighbouring powers while your ſubjects remain in indigence. Encircled with wealth, your name will be feared, your alliance become deſirable, your rights reſpected, your pretenſions ſupported; you will give laws to your neighbours:—but they will give laws to you while they continue to exceed you in opulence.

To what cauſe then muſt we attribute this difference, or rather contrariety of views, between the politicians of antient and modern times? Muſt we ſuppoſe error and fallacy in one of theſe ſchools; or rather admire both for having adapted their maxims to the genius and prevailing ſpirit of the

times in which they taught? Does not the hiſtory of antiquity ſhow that the richer nations received their laws from the poorer—and do not the modern annals of Europe ſhow us the contrary? Would any cauſe of apprehenſion ariſe in the preſent ſtate of affairs from a republic adopting the ſame principles, the ſame views, the ſame maxims, as that of Rome? Let me repeat it, the aſpect of affairs is changed. The ſtronger has ceaſed to give laws to the weaker: it is the rich that now vanquiſhes the poor. The time is paſt when two legions could ſupport a war againſt a whole nation. We muſt now have armies, and theſe require reſources. More than two hundred thouſand men prepared to inflict or ſuffer death, and more than fifty millions of ſpecie have formed the title on which in modern times the Houſe of Auſtria has been obliged to ſupport her pretenſions to a few acres of Bavaria.

Wealth is therefore become the great inſtrument of war, and gold and ſilver the barriers or vehicles of conqueſt. Theſe principles are incontrovertible becauſe founded on facts that come under our own obſervation. We muſt now direct our attention to another quarter.

In America, among a free and enlightened people, the offspring of Europe, by oppreſſion rendered inimical to the mother country, is heard a voice that cries: Europeans, if to ſerve you we firſt ſought the new world; know, that our wealth and the knowledge of what we may yet acquire, will no longer endure an oppreſſive ſervi-

tude

tude which may be changed for a liberty enabling us, ere long, to give laws to you, and make you repent of having been the artificers of your own chains. Independence, the fruit of your injuſtice and our reſentment; the celerity with which our commerce may be proſecuted; the facility we enjoy of collecting at pleaſure the riches and products of the two hemiſpheres; the advancement of our population, increaſed as well by a multiplicity of marriages naturally ariſing from public opulence, as by the influx of ſtrangers, whom the expectation of meliorating their conditions will invite to the regions of liberty. All theſe advantages, united with the ſuperiority which the vigour of youth, and the conſciouſneſs of proſperity communicates to men and to ſtates, will make us arbiters of the fate of America and of Europe. We ſhall with eaſe be enabled to force from your poſſeſſion the ſources of your opulence: by the immenſe diſtance that ſeparates us from you, we ſhall be enabled to compleat our preparations for invaſion, before the rumour of our intentions can reach your ſhores; we ſhall not only have it in our power to chuſe our enemies, but the place and the moment of victory; our reſources and our ſituation will enſure the felicity of our enterprizes; our victorious fleets will be conſtantly hovering around coaſts which can neither be ſecurely guarded, nor ſtrenuouſly defended by diſtant potentates: reinforcements will arrive ſlowly: in ſhort, your colonies will either become our provinces, or will be enabled to burſt the chains which

bind them to you, by the influence of an alliance with us; an alliance to which we ſhall never be averſe, when the voice of liberty requires our aſſiſtance in oppoſing tyrannical uſurpation. Thus deprived of America, and conſequently of Aſia, which needs only our ſilver, you will revert to the ſtate of obſcurity and barbariſm from which you have emerged; and your poverty alone will avail to protect you from a juſt but unprofitable vengeance.

Such is the melancholy intimation which Europe may derive from the Engliſh colonies—and this people, though by no means a republic of poor and warlike Romans, may yet afford ample cauſes of apprehenſion.

Let us haſten to a concluſion: if the prevailing ſpirit and diſpoſition of the age conſiſt in an accumulation of wealth; if ſuperiority no longer favor ſtrength, courage, and warlike virtues, but be rather propitious to opulence; if the wealthier nations be more happy at home, and more reſpected and feared abroad; the legiſlator ought now to direct that attention to agriculture, to the arts, to the acquiſition, preſervation and diffuſion of wealth, which was once wholly engaged in attempting to unite an undaunted ſoul with a robuſt and active body.

By the general character and temper of the times, ſyſtems of legiſlation ought ever to be guided; we deduce this great legiſlative principle from our enquiry into the relation which ought to ſubſiſt between the laws and the national character

character, conſidered under the firſt point of view. Let us now examine the ſame relation under another aſpect: let us obſerve what influence may be apprehended from the particular nature and diſpoſition of that people, for whoſe uſe the law is to be promulged.

Notwithſtanding the numberleſs cauſes which now concur in deſtroying every diſtinction between the genius, diſpoſition, and reſpective characteriſtics, of the nations of Europe; notwithſtanding the continued communication between its different inhabitants, and the almoſt common origin of their forms of government; notwithſtanding the conſequences of the feudal ſyſtem, whoſe principles have prevailed without any conſiderable variation over the whole of Europe, and neceſſarily introduced the ſame maxims, diſtinctions, and ariſtocratic prejudices; the ſame gallantry and law of arms; the ſame capricious and inconſiſtent code of honor; notwithſtanding the harmony of morals derived from a common religion, which, although perverted by ſome nations, has invariably remained the ſame in reſpect to thoſe precepts which have any influence on manners;—notwithſtanding all theſe reaſons, I yet aſſert, that the character and diſpoſitions of the various nations of Europe are diſſimilar. If the diſtinction be not ſo forcible as that which ſubſiſted between the people of the heroic ages, who never approached but to deſtroy each other, there appears at leaſt ſuch a difference as the legiſlator ought not to

deſpiſe

deſpiſe, and ſuch as muſt neceſſarily have a powerful influence on the ſpirit of legiſlation.

I ſeek not the cauſe of this difference, I only attend to its effect. In the French, for example, I obſerve a nation lively, active, ready at invention, of a refined taſte, diſplaying even in its follies an incredible bias to arts and manufactures: hence I am warranted in concluding, that in this nation the legiſlature ought more particularly to encourage agriculture. An art ſo laborious, ſo unflattering to vanity, in France, more than in any other country, requires aſſiſtance from the law to prevent its being abhorred and neglected. The manufactures and occupations dependent on taſte, will always flouriſh without any particular encouragement. This nation will always give the ton to faſhion, will aſcertain the mode which the reſt of Europe muſt adopt in adorning their perſons, furniſhing their houſes, and even in deforming their women, who loſe amidſt the caricature of faſhion that beauty, which nature never ſuffers to appear unaccompanied by ſimplicity. In France, all this may be obtained without much difficulty. But without ſome effectual encouragement, the country will remain deſerted, and will languiſh as it already does, from a defect of cultivation. Had the great Colbert been adviſed of this truth, he would not have ſacrificed agriculture to the arts, ſince by promoting the firſt he might have united all the advantages of both. The reputation of his miniſtry would not then have remained undecided.

From

From France, proceeding ſouthward, I obſerve a different genius, a different diſpoſition, and an entire diſtinction of character.

In the Spaniard I diſcover a degree of frankneſs apparent in his expreſſions, and his attachments, and even viſible in his manner of effecting bargains:* I alſo obſerve an unpoliſhed ſeverity in his deportment, a ſtrong predilection for antient uſages, a mind diſpoſed to ſuperſtition, and a certain haughtineſs of ſpirit which induces him to conſider induſtry in a degrading point of view. Hence I infer, that the legiſlator ſhould profit by ſome traits in the character of this nation, while he endeavours to correct others.

He might avail himſelf of their honour and good faith to promote and facilitate commerce, as well at home as abroad. He might ſafely diſpenſe with many of thoſe formalities which retard their contracts, formalities which in other countries the law has been obliged to introduce as a preſervative againſt fraud and deceit.† He might take advantage of their unpoliſhed manners, and uſe it as an inſtrument for ſupporting ſtrictneſs of morals. Their peculiar attachment to antient uſages ſhould

* Their probity has been commended even by the antient hiſtorians. Juſtin. lib. xliii, ſpeaks in praiſe of the fidelity with which they preſerved the depoſits intruſted to them.

† This would not be the firſt inſtance of the law having left to the genius and character of the people the ſupplying its ſanction. We know that the Romans, during a conſiderable period, had no particular laws againſt peculation, and that on the firſt appearance of

ſhould warn him of the contempt which would attend an introduction of the moſt uſeful novelties, and convince him that in a nation like this, new plans ſhould be adopted with caution, and conducted with ſobriety. By their propenſity to ſuperſtition, the legiſlator ſhould be taught, that Spain has more need of an inquiſition againſt exceſſive credulity, and the impoſtors who abuſe it, than againſt irreligion, to which the Spaniard ſeems by no means inclined; and that the advancement of knowledge and information (ever inimical to ſuperſtition) ſhould here be conſiderably accelerated. The haughtineſs of ſpirit which induces them to look on induſtry with ſo ſcornful an eye, ſhould ſuggeſt to him, that in Spain, rendering induſtry profitable would not be ſufficient, but that as a ſtimulus to its progreſs, the law ſhould make it honourable, and employing the ſame ſpirit of pride by which it is now deſpiſed, render it a deſirable attainment for all, by ennobling its exertions. Let not the hackneyed objection of impoſſibility be offered. To a wiſe legiſlator nothing is impoſſible. If, among the Grecians, baniſhment from their country became an honourable diſtinction, if the wiſdom of legiſlation could even render the oſtraciſm enviable; if the attainment of this diſtinction, as

of this crime at Rome, it was conſidered in ſo infamous a light that the mere reſtitution of what had been embezzled was thought an adequate puniſhment. See the obſervation of Livy reſpecting *L. Scipio, lib.* xxxviii. Plato (de Legibus, lib. xii.) informs, that Rhadamanthus, who governed a people remarkable for piety, rqeuired no proof but the oath of the party.

as the reward of his merits, were the laſt wiſh for whoſe accompliſhment the illuſtrious Athenian addreſſed his prayer to the gods; if, in our own times, the legiſlator of a northern clime have ſucceeded in giving a new tone to his nation; if Sweden can no longer be recognized ſince Guſtavus aſcended the throne; if by this young prince a general revolution in the form of government, manners, and even dreſs of his ſubjects, have been meditated and effected in the courſe of a few years; is it impoſſible that a ſimilar revolution ſhould with equal facility take place in Spain? Had it been my principal object to form a plan of government for this nation alone, I would have pointed out the road to be taken, the means to be employed, and the facility of the operation; but this is not my preſent taſk. I have mentioned France and Spain in this Chapter merely to ſhew in what manner the genius, diſpoſition and character of the people receiving the laws, ought to influence ſyſtems of legiſlation. Satisfied with having explained my opinions, as I truſt I have done, with ſufficient perſpicuity, I proceed to examine the influence of climate.

The contrary opinions of philoſophers and politicians, the difficulty of throwing any light on a queſtion of ſuch obſcurity, and the many obſtacles to be encountered in endeavouring to generalize the legiſlative principles derived from this ſource, will occaſion my being more prolix than I could have wiſhed in my enquiry. I hope,

however,

however, the fault will be compenſated by the novelty, the importance, and the truth of my concluſions.

CHAPTER XIV.

Fourth Object of the Relation of Laws: the Climate.

IT has hitherto been imagined, and is perhaps ſtill believed, that the influence of climate was firſt inveſtigated by Monteſquieu: but the opinion is founded in error. Before *his* writings appeared, the ſubject had been treated by the delicate and amuſing Fontenelle.* Chardin, a reflecting traveller, has made many obſervations reſpecting the influence of climate on the phyſical and moral conſtitution of mankind. The Abbè du Bos ſupported and explained the opinions of Chardin: and Bodin, who had perhaps read in the works of Polybius that the difference obſervable in the ſhape, complexion and manners of mankind originates in climate, founded his ſyſtem on this baſis, as well in his *republic* as in his 'Method of Hiſtory' 150 years before.† Prior to either of theſe writers, Hippocrates, the divine Hippocrates, examined

* Machiavel, in various parts of his works, alſo mentions the influence of climate on the nature and morals of men.

† *Septemtrionales populos* (ſays he in his 5th Book, cap. 1.) *vi et armis ſubditos fore in officio continere, auſtrales religionis ac numinis metu; cæteros æquitate et imperio rationis.*

examined the ſubject at large in his celebrated Treatiſe on Air, Water, and Situation. And laſtly came the author of the Spirit of Laws, who without quoting any of theſe authorities, did no more than tranſpoſe the principles of Hippocrates, and carry to a greater length the opinions of Du Bos, Chardin, and Bodin. He was willing to impreſs the world with a belief of his having been the firſt who had conſidered the ſubject, and the world gave him credit for the fact. We muſt nevertheleſs pardon this deceit in a creative genius, accuſtomed to original thinking, who imagined he invented when he only copied. To the opinions of theſe celebrated writers, I ſhall venture to ſubjoin my own, ſince it is not difficult *inventis addere*.

I willingly leave to the author of the Spirit of Laws, all his obſervations upon a ſheep's tongue, on the coat of which, he obſerves, there appear ſmall eminences covered with hair, or a kind of down, and interſperſed with pyramids forming on the outſide certain papillæ, which inſtantly diſappear if the tongue be frozen; whence he deduces the different degrees of ſenſibility, ſtrength, and courage, in different climates, the greater or leſs vehemence of the paſſions, and the ſtronger or leſs violent propenſity to pleaſure. I willingly paſs over theſe remarks, which would appear with greater propriety in an hiſtory of the microſcope than in a political treatiſe. Nor do I believe it in any degree neceſſary that we ſhould carry our ideas on the influence of climate

climate to ſo extravagant a length as to ſuppoſe it the univerſal cauſe of every moral and political phænomenon; whatever may be the opinion of the ingenious author laſt mentioned, who in the courſe of this enquiry has rather diſplayed eccentricity of genius, than accuracy of obſervation, or truth of concluſion. I ſhould be extremely anxious to avoid falling into ſimilar errors; I ſhould be particularly fearful of abuſing, as he has done, the ſacred light of hiſtory and experience.

Would it be poſſible for me to aſſert with the author of the Spirit of Laws, that the reaſon of northern nations having always vanquiſhed thoſe of more ſouthern countries, originates in climate; when I behold hiſtory offering at leaſt as many facts to contradict, as can be found to ſupport this opinion? The Romans, it is true, were conquered by a northern power: but had they not at a former period overcome the ſame people? Were not their arms triumphant over both the Britons and Sarmatians? Did not Tamerlane follow the courſe of victory from the ſhores of India to the frozen regions of Siberia? Did not the Peruvians ſubdue many nations ſituate in the northernmoſt parts of their country? Were not the ſuperſtitious ſtandard of the cruſaders torn in pieces by the valiant Saracens? Did not the ſame people leaving the burning ſands of Arabia vanquiſh a variety of nations? Did they not ſubjugate the Spaniards, and bring deſolation into the very centre of France? After the Huns had abandoned the Palus Mæotis, did they not

not enſlave nations ſituate far to the northward? Were not the Parthians an object of terror to Rome at an æra when the Romans had yet loſt nothing of their primitive valour? Did there never exiſt a period when the Elamites and Egyptians might be enumerated among the moſt warlike nations on earth? Was the ſun at a greater diſtance from Perſia in the fortunate days of Cyrus? Was not Laconia, now inhabited by the moſt timid ſlaves, once a country of warriors and heroes? Muſt it be attributed to climate that no Phocions are now to be found at Athens, no Pelopidæ at Thebes, no Decii at Rome? Can I venture to aſſert, with this author, that it is climate which renders northern nations more devoted to liberty than ſouthern, when I behold the throne of deſpotiſm alike eſtabliſhed amidſt the burning ſands of Lybia and the frozen regions of the north; in the fertile plains of Hindoſtan and in the dreary deſerts of Scythia? Can I imagine the inhabitants of northern countries born to freedom, when I obſerve the feudal ſyſtem extending its influence over Ruſſia, Denmark, Sweden, Hungary, nay almoſt over the whole of Europe? Can I be perſuaded that in the warmer climates man is doomed to ſlavery, when I obſerve the wandering Arab eluding for ſo many centuries the yoke of deſpotiſm, by which the Perſian, the Egyptian, and the Moor, his neighbours, are ſtill oppreſſed. Under the ſame parallel may we not behold Tartars unconquered, and Siberians ſlaves?

Is it, in ſhort, to climate that the frequency of ſuicide in England muſt be attributed; when more than fifty wretches, in one year,* ſacrificed themſelves with their own hands at Paris? When in Geneva ten or twelve ſuicides annually occur—When at Rome during the ſpace of ſeven centuries not a ſingle ſelf-murder was heard of, excepting that of Lucretia; though afterwards, (without any change of climate) in the courſe of a few years, Cato, Brutus, Caſſius, Anthony, and ſo many others offered this fatal example to the world?

I ſhould never conclude, were I to expatiate on all the effects which Monteſquieu attributes to climate, but which, in fact, both reaſon and experience authorize us in aſcribing to cauſes in a great meaſure, if not entirely, independent of it. On this point the reader may be referred to the celebrated work of Hume,‡ who, by the extent of his underſtanding and the ſolidity of his arguments, has ſucceeded in undeceiving the public with reſpect to thoſe paradoxes, over which the eloquence and epigrammatic graces of Monteſquieu had ſcattered the ſemblance of truth. Yet as all extremes are to be avoided, I cannot but conſider theſe authors alike reprehenſible: the one in having attributed to climate too conſiderable an efficacy, the other in having denied its influence altogether

* In the year 1774.

‡ Moral Eſſays, Eſſay 24. Obſerve alſo the ſpirit which pervades the whole work of Helvetius, particularly Diſcourſe iii.

altogether. Following the middle path, I am content with ſtating:

I. That climate may doubtleſs exert an influence over the nature and morals of mankind as a *concurrent*, but never as an *abſolute* cauſe.

II. That its influence is perceivable and its operation active in powerful climates, (I mean thoſe where the degrees of heat or cold are exceſſive) while in temperate ones its effects can ſcarcely be diſcerned.

III. The poſition of a country with reſpect to the ſun ſhould not alone determine our idea of the climate.

IV. Whatever be the degree of influence derived from climate, it muſt on no account be neglected by the legiſlator, who ought to remedy its effects when pernicious, avail himſelf of them when uſeful, and reſpect them when indifferent.

I intreat the reader that he will not haſtily form deciſions unfavorable to that arrangement, which I find myſelf under the neceſſity of adopting in the preſent Chapter, until the whole of it has been read: I entreat him that he will not condemn me for unneceſſary prolixity, while he obſerves me engaged in reſearches which at firſt glance may appear foreign to my deſign. When he ſhall have diſcovered the point in which the various threads unite, he will be perſuaded that it is indiſpenſable for me to ſettle with preciſion all theſe premiſes, that I may have it in my power hereafter to deduce the legiſlative principles derived from theſe ſources.

To elucidate my propoſitions therefore in the order I have ſtated them, I begin my enquiry with the firſt.

Climate has an indiſputable influence on the nature and manners of men. The igneous matter diffuſed over the ſuperficies of our globe is doubtleſs an agent of nature: it is a power which cannot remain inactive. Its influence muſt extend alike to vegetables and to animals. Man, diſtinguiſhed from theſe by the perfection of mind, if he exerts his intellectual faculties, may modify, in a certain degree, the effects of this active power, but cannot aſſuredly deſtroy its influence. To the exceſs or defect of this matter diſperſed in the atmoſphere he breathes, muſt be attributed the heat or cold of the climate. Mankind therefore may, in ſome meaſure, remedy the inconveniences of this heat and cold, but can never entirely prevent their operation. Immoderate heat, whether derived from the ſun's aſpect or from local cauſes, muſt neceſſarily induce a relaxation and delicacy of the muſcular fibre; and ſetting the humours in continued motion muſt enfeeble the body by a perſpiration too copious: in ſhort, muſt diminiſh his natural heat, which is conſtantly, as hath been demonſtrated by phyſiologiſts, in an inverſe proportion to the heat of the climate. If this be allowed, it muſt neceſſarily follow that the moral part of our frame is ſenſibly affected by any difference that may ariſe in its natural organization. Let us contemplate ourſelves, the inhabitants of a temperate climate.

When

When we experience exceſſive heat, do not our memories grow languid—do we not feel ourſelves on the verge of imbecility? Our ideas ſeem ſhrouded by a veil: an unuſual laſſitude oppreſſes our intellect. We ſeem to have loſt all command over the exertions of mind. So ſtrong is the ſympathy between ſoul and body, that the injuries of the one are neceſſarily participated by the other: of conſequence it is abſurd to aſſert, that climate has no influence over the conſtitution and morals of man: but it is no leſs abſurd to pretend that this power operates excluſively on human nature.

If the ſoul be ſubjected to the impulſes of the body, the body muſt alſo be obnoxious to thoſe of the ſoul. Such is the neceſſary reſult of their reciprocal dependence. Education, laws, religion, the ſpirit, maxims, and principles of government, are ſo many active powers, which exert an unfailing influence over mankind in civil ſociety. They accelerate or retard the developement of their mental faculties; excite, reſtrain, or direct their paſſions; render them timid or courageous, idolaters of liberty, or paſſive under the ponderous fetters of deſpotiſm. This union of moral and natural cauſes (among which climate has ſometimes the greateſt, at others the moſt inconſiderable influence,) conſtitutes the man of civilization. Theſe cauſes make him what he is. The preciſe degree of activity poſſeſſed by each of theſe powers cannot without difficulty be aſcertained: but to reduce the queſtion to a general poſition, it may be

ſaid, that amidſt an aſſociation of ſavages the phyſical cauſes, and in more civilized ſocieties the moral ones operate with greater energy.* Climate, therefore, has the influence of a concurrent, but never operates as an abſolute cauſe on the phyſical or moral conſtitution of men. But, allowing a perfect conformity in other circumſtances, are its effects ſimilar in all places? This forms the ſubject of my ſecond propoſition.

We have ſaid that the influence of climate is perceivable, and its operation active, in powerful climates, where the degrees of heat or cold are exceſſive

* No one more clearly underſtood this truth than Hippocrates. I ſhall here tranſcribe a paſſage from this celebrated writer, to ſhow the analogy between his principles and my own. In conſidering the cauſes of the greater part of the people of Aſia being averſe to war, though it muſt be confeſſed he does not exclude climate, yet he attributes the principal reaſon to the nature of their government. After having pointed out the phyſical cauſes, he ſays:

Propter quas ſane cauſas imbelle univerſum Aſianorum genus exiſtit, atque adhuc amplius propter leges. Maxima enim Aſiæ pars ſub regibus eſt. Ubi autem non in ſua poteſtate vivunt homines, neque ſui juris ſunt ſed dominis ſubjecti, ibi non multum curioſi ſunt quomodo ſe ad bellum apparent, imo magis curant ut ne bellicoſi videantur. Pericula enim eïs non æqualia inſtant. Nam bi in militiam proficiſci, laboreſque perferre ac mortem oppetere pro dominis ſuis coguntur, relictis interim domi liberis, uxoribus ac reliquis amicis: atque ſiquidem viriliter, et feliciter bellum geſſerint, dominis inde commoda accedunt, eorumque facultates inde augentur, verum ipſis præter pericula et cædes nihil demetitur. At quod quicunque in Aſia Græci, itemque Barbari dominis non ſubſunt, ſed jure ſuo degunt, ſibi ipſiſque omnes labores benefaciunt, illi bellicoſiſſimi omnium exiſtunt.—Unde bellicoſiores quoque Europæi exſtant non ob hanc ſolam cauſam (alluding to the climate), *ſed et propter leges. Non enim regibus obediunt, quemadmodum Aſiani. Ubi enim ſub regibus vivitur, ibi neceſſe eſt, homines timidiſſimos eſſe, quemadmodum et ſupra oſtendi.*—Hippocrates de Aëribus, Aquis et Locis: §. 39, 40, 41, 54.

exceſſive, but that in temperate regions its effects can ſcarcely be diſcerned. Let us examine this queſtion more minutely.

Man, according to the obſervations of phyſiologiſts, is ſuſceptible but of a determinate degree of heat. This degree is compoſed of his natural warmth, and the atmoſpheric heat of the country in which he reſides. In proportion therefore as the atmoſpheric heat is greater, his natural heat will be leſs, and in the ſame proportion that the atmoſpheric heat is leſs, his natural heat will be greater. In temperate climates, this natural warmth is generally in equilibrium with the heat of the atmoſphere; or the difference, if any, is ſo ſmall as to be imperceptible, if not in degree, at leaſt in effect. But in climates of a powerful kind, intenſely hot, or intenſely cold, this difrence muſt be very diſtinguiſhable, and ſenſibly experienced.

If, for inſtance, in one country the atmoſpheric heat exceed the natural by two third parts, and if in another, the natural heat exceed the atmoſpheric in the ſame proportion; the great difference of organization in the people inhabiting theſe two countries muſt be ſo apparent and decided, that its influence on the developement of the powers of nature, and on the moral faculties dependent on theſe powers, cannot poſſibly eſcape the attention of the moſt ſhort-ſighted obſerver. In Greenland or Senegal, every one muſt remark the effect of climate on the temperament, manners, and way of

living of the inhabitants, but who can diſcern its operation at Paris, Genoa, Naples, or Conſtantinople? I do not aſſert that in theſe countries climate has no influence: I only ſay that its activity is ſo ſlight and inefficient, that a man muſt be extremely prejudiced in favor of Monteſquieu's ſyſtem to diſcover its operation. In powerful climates then, this influence is great, and is ſenſibly felt; but in temperate regions it is ſcarcely perceivable. It yet remains to be aſked, whether the ſituation of a country with reſpect to the ſun, ought alone to determine the nature of its climate. May we not, under the ſame meridian, behold countries extremely hot and extremely cold, one climate temperate, another powerful? This is the third propoſition which I am engaged to inveſtigate.

I ſhall illuſtrate my opinions by facts alone. Were the nature of climate to be determined merely by the poſition of a country with reſpect to the ſun; in order to calculate the proportion of heat and cold, we need only remark the number of degrees and minutes which ſeparate the parallel under which it is ſituate from the equator. This would be a very eaſy operation. But let the geographer, who might undertake to ſupport ſuch a principle, aſcend a neighbouring mountain or go down to the neareſt ſhore, under preciſely the ſame latitude, and he will be ſatisfied of its fallacy. He will find, that among two hundred countries under the ſame parallel of latitude, not more than two or three enjoy a ſimilar climate: he would in the reſt perceive a difference

difference more or leſs ſenſible, according to the variation of local circumſtances; nay, he would ſometimes obſerve a deciſive contrariety. Under the ſame latitude in which the heat of Africa is ſo exceſſive, are not the Cordeliers of Peru covered with ſnow? Does not all the rigor of the frigid zone extend its influence in the new world over half of that region, which, by its ſituation with reſpect to the ſun, we might expect to have found temperate. Newfoundland, part of Nova Scotia, and part of Canada, are under the ſame line as that which paſſes through France: the country of the Eſquimaux, part of Labrador, and the regions ſituate ſouthward, in Hudſon's Bay, are in the ſame latitude as Great-Britain; yet how infinite is the difference of climate?*

Thus it is not merely the poſition of a country with relation to the ſun that muſt determine the climate, which is diſtinguiſhed rather by the proportion of heat and cold ariſing in the atmoſphere; and depends not entirely on latitude, but may be occaſioned by other local circumſtances, ſuch as the extent of continent, the nature of the ſoil, the vicinity of woods, the height and poſition of adjacent mountains, the prevailing winds, and a variety of ſimilar accidents.† Perſuaded of the truth of my three firſt propoſitions, I proceed to conſider the fourth, which is more nearly allied to my argument.

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* Robertſon's Hiſtory of America. Lib. 4.

† Varen. Geograph. general. Cap. xxvi. Prop. 1.

It has been already ſtated, that *whatever be the degree of influence derived from climate, it muſt on no account be neglected by the legiſlator, who ought to remedy its effects when pernicious, avail himſelf of them when uſeful, and reſpect them when indifferent.* In this point the various threads hitherto drawn out are approaching to an union.

We have remarked,* that although climate never acts as an abſolute but rather as a concurrent cauſe, it has nevertheleſs a certain operation on the conſtitution and morals of mankind, which the legiſlator ought never to overlook.

We have ſeen farther,† that this influence is not always equal, that its action is experienced ſometimes in a greater, ſometimes in a more ſlight degree: that in powerful climates it poſſeſſes an active energy; in temperate, its influence is inconſiderable. What effects then muſt the variation of this influence produce in the legiſlative ſyſtem?

The general maxim that extremes are allied, is verified with reſpect to climate. In ſuch as are extremely hot, or intenſely cold, the developement of the moral faculties of man is alike impeded. His natural heat being, as we have before obſerved, in an inverſe proportion to the warmth of the atmoſphere, is exceedingly diminiſhed in very warm climates, and equally increaſed in thoſe where extreme cold predominates. Yet the contrariety of phyſical cauſes produces a ſimilar moral effect. It equally changes the mechaniſm of man, and

* Firſt Propoſition. † Second Propoſition.

and alike prevents the developement of thoſe faculties, which cannot exiſt independently of his phyſical conſtitution. A conſiderable relaxation of the muſcular fibre, a very ſlight attrition of the fluids, and a tardineſs of animal motion, render men in extremely warm climates very feeble, of little ſenſibility, and conſequently ſtupid in a remarkable degree. On the other hand, in climates extremely cold, a great rigidity and tenſion of fibre, a powerful attrition of the fluids, and an extreme compreſſion of the arteries, united with a thick and inflammable blood, muſt neceſſarily induce a ſluggiſh torpor. What is the natural inference? It follows, that to obtain the effects propoſed, the energy of the laws ſhould be alike exerted in very hot and in very cold countries. In temperate regions, if we wiſh to produce political motion (the vital principle of ſociety) it will be ſufficient that the legiſlator employ himſelf in removing obſtacles. But in the climates of which we have been treating, this is not enough; there muſt be incitements, powerful incitements. We muſt have recourſe to great rewards, great threats, an education more ſevere, an emulative ſpirit, rouſed and invigorated by the whole power of the law, an induſtry not awakened and animated by liberty alone, whoſe bleſſings in our temperate climes would act as a ſufficient ſtimulus to the higheſt degree of exertion, but encouraged alſo by the munificence of government. It is by means like theſe that the legiſlator might remedy the effects of climate when pernicious:

pernicious: but let us for a moment conſider whether he might not in ſome degree obviate the cauſe itſelf.

We have already ſeen, that the poſition of a country with reſpect to the ſun does not alone determine its climate, but that local circumſtances have alſo a ſhare in its formation. Now local difficulties may be frequently overcome. If they depend on the number of woods, on ſtagnant waters, on the vicinity of moraſſes, or on other cauſes of this kind; the legiſlature, in ſuch inſtances, by encouraging population and agriculture, will ſee the woods cleared, the moraſſes drained, the impediments which obſtructed the current of the water removed, in a word, the rigors of the climate diminiſhed in proportion to the ſuppreſſion of thoſe cauſes which occaſioned its ſeverity. This is by no means an abſtract ſpeculation. We have a variety of inſtances to ſupport it, as well in the old as the new hemiſphere. The viciſſitudes of nature on our earth afford us endleſs examples of local alterations in the climate of various countries, ariſing from the advancement or decline of population among its inhabitants. The ſoftneſs of Italian ſkies was vainly ſought, after the northern barbarians had overſpread that country with the devaſtation of their arms, their manners, and their laws. Among the Dutch, encouraged by liberty and wiſe laws, population and induſtry have baniſhed the rigors of antient Batavia. Similar cauſes have produced ſimilar effects in Germany, in England,

and

and in Pennſylvania. The heroic inhabitants of this latter region have found means to extricate themſelves from the inconveniencies of their climate, as well as from the oppreſſions of their mother country. A wiſe legiſlator may therefore ſometimes moderate the ſeverity of climate, and may always remedy its pernicious effects. With how much greater facility might he not avail himſelf of its ſalutary tendency?

In our temperate climes, where nature, inſtead of retarding, accelerates the developement of man's intellectual powers; where the moderate elaſticity of the air ſeems to have intended thoſe who inhale it to enjoy the excluſive privilege of diſplaying at once the utmoſt degree of activity; where neither an exceſſive rigidity and tenſion of fibre ariſing from extreme cold, nor an exceſſive relaxation derived from immoderate heat, are obſerved to occaſion ſtupor, or diminiſh ſenſibility; where the ſtimulus of pleaſure, united with ſtrength and vigour of body among the men, as well as the prolific nature of the women, would certainly promote the higheſt degree of population, did not moral cauſes render ineffectual this favorable concurrence of phyſical circumſtances: in our temperate climates, where the ſalubrity of the air offers induſtry an unlimited ſcope for exertion, where arts and manufactures of all kinds, whether they require the open air or have need of fire, whether they demand ſkill or ſtrength in the artificer, may be cultivated with equal ſucceſs: in our temperate climes,

climates, I ſay, with what facility might not the legiſlature promote the advancement of population, induſtry, arts, manufactures, and public inſtruction. To obtain theſe advantages in countries extremely hot, or intenſely cold, it has been obſerved we have need of the moſt powerful incitements; while to arrive at the ſame end in temperate regions, like our Italy, we have only to remove obſtacles. Little exertion therefore is neceſſary on your parts, O ye fortunate legiſlators of theſe happy climes. Nature herſelf has ſmoothed the road by which your people may be conducted to proſperity. Your own laws have obſtructed the path with ſtones, with thorns, and ſhameful impediments. Reſtore it then to the ſtate in which it was left by nature: reſign to *her* the care of perfecting her own work.

By means like theſe ſhould the legiſlator avail himſelf of the influence of climate when uſeful. Let us now determine in what view it ought to be regarded when indifferent.

Among the various effects attributed to climate, there are ſome which can neither be conſidered as uſeful or pernicious, but rather as indifferent. In caſes of this kind, to counteract nature would not only be uſeleſs, but productive of fatal conſequences.

If a particular ſpecies of induſtry, if an art or manufacture be inconſiſtent with the climate; in attempting its encouragement, would not the legiſlator fall into a groſs error? Would not this induſtry, art, or manufacture remain, to the diſ-

grace

grace of the law, for ever imperfect, as well as unprofitable to thoſe engaged in its exerciſe? Might not the hand ſacrificed to theſe occupations be employed with greater benefit to the ſtate and to the artificer in ſuch arts, manufactures, and induſtry as the climate approves and requires? By the ſuperfluities ariſing from theſe, might not the nation be ſupplied with products which their own country denies: If the exerciſe of an art demand the aid of fire, can it be proſecuted with effect where the heat of the atmoſphere is intenſe—of if it require open air, can it be ſucceſsfully carried on in a country extremely cold? What would be our opinion of a legiſlator deſirous of eſtabliſhing the art of making glaſs in Zanguebar, or promoting the trade of ſhip-building on the frozen ſhores of Lapland? Man, whether too near or too far removed from the equator, whether ſituate in a climate immoderately warm or cold to an extreme, will be incapable of many kinds of labour, and of a variety of occupations, which under another ſky might be proſecuted with ſucceſs.

Non omnis fert omnia Tellus.

With equal truth may this remark be applied to man. Oppoſing nature in the caſes above ſtated, would be a caprice at once unprofitable and dangerous. Let the legiſlator then remedy the effects of climate when pernicious, and take advantage of them when uſeful; but let him reſpect them when indifferent. Let him imitate the policy of the Hebrew lawgiver, who interdicted the fleſh of ſwine,

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and prohibited fiſh without ſcales or fins; eſtabliſhed purifying baths, and enjoined abſtinence and faſting; but never encouraged the uſe of oil among a people deſtined to dwell under a warm ſky, in a region where the climate muſt have rendered all nutriment of this nature inimical to the health of the inhabitants.

From climate I proceed to inveſtigate another phyſical object of the relation of laws, the nature of the ſoil.

CHAPTER XV.

Fifth Object of the Relation of Laws: the Fertility or Barrenneſs of the Soil.

SOILS, conſidered with reſpect to their fertility or barrenneſs, may be reduced to three diſtinct claſſes. Thoſe in which the earth yields all her products with a very inconſiderable aſſiſtance from man: thoſe where the liberality of nature is proportionate to the induſtry of the huſbandman; and thoſe which remain always unproductive, how copiouſly ſoever bedewed with the ſweat of the laborious inhabitants. Under theſe different views ſhould the legiſlator conſider ſoil. In the firſt inſtance, the productive claſs requiring a ſmall number of labourers, he may with leſs hazard protect manufactures and arts: ſince in a country

ſo

ſo luxuriant, the proportion of manufacturers will never be ſufficiently conſiderable to deprive the earth of the few labourers required to gather the fruits of her fertility.

On the contrary, in the ſecond inſtance, where a number of hands are required to cultivate the ground, an immoderate increaſe in the claſs of artiſans and manufacturers muſt be cautiouſly avoided; for an oppoſite conduct, multiplying arts and artiſts at the expence of agriculture, would be doubly injurious to the ſtate. The intereſts of agriculture, which is the principal ſource of national opulence, would be thereby ſacrificed without promoting thoſe of manufacture; ſince the high price of goods originating not in exceſſive conſumption, but in the deficiency of product, without benefiting the landholder, muſt unavoidably diminiſh the ſale of the manufactures by raiſing the price of labor. By this error was the celebrated *Colbert* deluded.

As to the third propoſition, where the ground is ſo ſterile as to produce no fruits, in ſpite of every exertion; in this caſe, the law muſt excite a people diſcouraged by the parſimony of the ſoil, to induſtry, arts, and commerce; that by the produce of their own hands they may compenſate the avarice of nature. Thus did Athens amidſt the ſands of the Piræus become a country of plenty: thus did Tyre and Sidon allure opulence to a region of ſterility: thus did Holland, under a tempeſtuous ſky, and on a ſwampy ſoil expoſed to the continual

inroads of the ſea, raiſe herſelf to greatneſs by the aſſiſtance of an induſtry and commerce, doubly beneficial, becauſe united with the bleſſing of liberty.* The nature of the ſoil then is not an object to be neglected in the framing legal codes, nor ſhould the ſituation and extent of the country paſs unnoticed.

CHAPTER XVI.

Sixth Object of the Relation of Laws—the Country's Situation and Extent.

IF the ſituation and extent of a country have any connection with the ſpecies of induſtry peculiar to its inhabitants, this connection muſt influence the legiſlative ſyſtem.

Let us ſuppoſe, for inſtance, a maritime country ſupplied with canals for internal communication as well as with convenient harbours, ſurrounded by nations unprovided with arts and manufactures, and conſequently obliged to procure from other quarters the productions of induſtry: ſuch a country offers every appearance neceſſary for exciting

* The reader muſt not be ſurprized at obſerving the rapidity with which I hurry over ſubjects which appear to deſerve a more particular examination. But as theſe principles will be explained in the following Book, I have here given only a general outline, in order to convey an idea of the principles derived from the relation of laws to the nature of the ſoil.

exciting the people to trade; and the laws in this caſe ought to ſecond the intention of nature.

Theſe circumſtances were all obſervable in Holland, when the inhabitants of the United Provinces ſhook off the Spaniſh yoke, and began to conſider their own intereſt. The ſea which encompaſſed this region of freedom, offered its inhabitants the produce of the whole earth and a commerce with the univerſe. Sterility of ſoil, the country's confined limits, the waters which while they facilitated internal communication, at the ſame time covered the land, obliged them to ſeek from abroad the means of ſubſiſtence. Europe, of which this ſtate occupied ſo wretched a portion, remained yet in ignorance. Nations, for the moſt part divided by wars and diſcord, were content with diſperſing within the limits of each province, the ſcanty proviſion of an ill-cultivated ſoil.

Every appearance therefore invited, or rather obliged the Dutch to become a manufacturing and commercial people. In trade, which among the greater part of nations may be conſidered merely as an acceſſary benefit, they ſaw the only ſupport of their liberty and of their exiſtence. Without land and without its produce, they determined by circulating more extenſively the commodities of other countries, to increaſe their value; aſſured that from univerſal proſperity their private emolument would neceſſarily follow. Their education, their maxims of government, in ſhort their

whole ſyſtem of legiſlation was directed to this ſingle object, and their ſagacity has been juſtified by the event. But in every country ſimilar diſpoſitions are not to be found.

When Peter the Great, a prince who would have atchieved more had he attempted leſs, adopted the arduous project of exciting his people to the cultivation of manufactures, arts, and commerce; when he determined to raiſe a formidable marine for facilitating and protecting this commerce; he was not aware that the ſituation and extent of his country oppoſed the deſign. Could an empire comprehending altogether a ſpace of two thouſand two hundred leagues in length, and eight hundred leagues in breadth, an empire, whoſe population was ſo defective, that on a calculation there were found but ſix men to every ſquare league, take ſo many labourers from cultivating the ground, and offer them as a ſacrifice to manufactures, arts, and navigation, without utter ruin to her agriculture? Had the population of Ruſſia been even proportionate to its extent, had the union of *theſe* circumſtances permitted ſuch a ſacrifice, yet its *ſituation* would have effectually prevented the ſucceſs of the undertaking. The ſea coaſt of Ruſſia is not very conſiderable. Her ſhores are for the greater part uninhabited; many are inacceſſible. Her harbours are few and incommodious, even that of Cronſtadt which ſerves as the port for Peterſburgh, is the moſt wretched and inſecure in Europe. The two ſeas which bound this vaſt empire

empire, it is well known, are unfavourable to navigation and commerce. In ſhort, the vicinity of England, Holland, and Denmark, ought to have convinced this prince that the commerce of *property and product* was the only traffic adapted to this unbounded monarchy, and that ſituation precluded it from participating the advantages dependent on tranſportation.

A competition was the object to which he ſhould have directed his attention, but this he overlooked. During almoſt an entire century the trade of Ruſſia was engroſſed by the Engliſh, who made their own terms, both with reſpect to purchaſes and ſales. His principal exertions therefore ſhould not have been employed in providing a commercial fleet, but in alluring the Danes, Dutch, and even the Southern nations to participate with England in the commerce of Ruſſia. This country might then have ſold at an advance, and made her purchaſes at a much lower rate. But conſiderations like theſe availed not to diſcourage the Czar Peter from his enterprize. He ſaw Holland flouriſhing under the auſpices of her marine. He thought he might obtain the ſame end by the ſame means, without reflecting on the infinite diſparity of circumſtances. This fatal ignorance of an art which ſhould be familiar to all who direct governments, I mean the art of combination, unluckily accompanied the reign of Peter the Great, and rendered it rather brilliant than uſeful. For what advantages did he procure to his ſubjects? With all his

abilities, with all his powerful exertions, he only removed ſlight inconveniencies, to perpetuate evils of a more dangerous tendency. He gave to Ruſſia painters, ſtatuaries, manufacturers, and pilots; but he increaſed the number of the unhappy. He began where he ſhould have ended. He wiſhed to poliſh his people before he had extricated them from miſery; he ſought the reformation of manners before he had reformed the conſtitution; in ſhort, he imagined himſelf poſſeſſed of ability ſufficient to create a people like the Dutch or Engliſh amidſt the feudal deſpotiſm of Ruſſia. For this reaſon his laws, his zeal, his travels, tended only to the welfare of Peterſburgh. In adorning this favourite production of his hands, he recalled to mens' recollection the idea of that coloſſal monſter, which had a head of gold on a trunk of clay. It is a general maxim, that we ſhould begin at the ſource and oppoſe nature as little as poſſible: it is preciſely on this principle that the ſituation and extent of a country and the nature of its ſoil are among thoſe moſt intereſting objects in which the legiſlator ſhould combine his views when he undertakes a new code. The moſt inconſiderable variation in theſe circumſtances may produce an aſtoniſhing diverſity in the intereſts of nations: whoſe ſyſtems of economic legiſlation muſt conſequently differ.

In the following Book theſe truths will be more clearly elucidated. I have here haſtily pointed them out, that I may be enabled to deduce from them

them the general principles of this ſcience. There is nothing which I hold in greater dread than unneceſſary prolixity. In every Chapter I reject numberleſs ideas that preſent themſelves to my mind: this do I owe to moderation, a virtue which, though highly neceſſary to every writer, cannot be acquired without infinite precaution. Among other truths which I was deſirous of demonſtrating in this Chapter, and which during my inquiry into the relation of laws to the extent of the country, would have been conſonant to the ſubject under conſideration, was the poſſibility of projecting a good plan of juriſprudence for the moſt extenſive empire on earth.

By an error which perhaps originated with the author of the Spirit of Laws, and to which deceitful experience has given a ſemblance of truth, hath a large portion of politicians been ſeduced. It is generally conceived that dominions of conſiderable extent are only ſuſceptible of a deſpotic government, and that the problem of a good legiſlation is in ſmall ſtates alone capable of ſolution.

But ſhall a country be deprived of ſo great a bleſſing merely on account of its magnitude? Muſt extended empires languiſh under the yoke of deſpotiſm? Can we believe that the largeſt bodies in nature poſſeſs the moſt imperfections, or that art may not with equal ſucceſs complete a coloſſus, and finiſh the ſmalleſt ſtatue?

An opinion ſo ſhocking to humanity muſt not remain uncontradicted. But I leave to the auguſt legiſlatrix of Ruſſia the taſk of undeceiving mankind in this inſtance, and of demonſtrating by fact the poſſibility of the undertaking.* Yet ſhould her code fail to correſpond with the expectations of Europe, and with her own zeal; nay, ſhould her failure ſupply one proof more in favour of the opinion of theſe politicians; let me intreat them to recollect the immenſe extent of the Chineſe empire, and the praiſes which themſelves have laviſhed on the moderation of its government, and the wiſdom of its laws.

CHAPTER XVII.

Seventh Object of the Relation of Laws—the National Religion.

NO ſubject has ſo deeply engaged the attention of the moſt celebrated legiſlators as the relation of laws to the religion of the ſtate.

In the infancy of ſociety, religion conſiſted rather in a pious adoration than in an aggregate of doctrines. Raiſing an altar, ſacrificing a victim, pouring

* The author's confidence in the liberal principles of the Empreſs of Ruſſia appears to have been ill founded. Has not the conduct of this potentate lately afforded us reaſon to conclude, that her wiſh is to ſubvert rather than eſtabliſh the liberties of mankind?——T.

pouring libations either to conciliate or to appeaſe their deities, comprehended all the religious duties of riſing nations. It ſoon began to be believed that the gods would at a future period reward virtue and puniſh crimes: but the idea of virtue and crimes was unſettled, and frequently erroneous. Religion ſometimes commanded what morality forbade, and often interdicted what morality required. Amidſt theſe diviſions of religion and morals, amidſt theſe erroneous conceptions of vice and virtue, good and evil; it was neceſſary the law ſhould interpoſe, and ſupport with one hand what it overthrew with the other.* The vicious and corrupt deities of paganiſm could not ſurely impoſe on mankind a morality which their own pretended actions had contradicted; nor could they preſcribe a worſhip which was not tainted with thoſe follies and enormities which blind and ſtupid credulity had learned to reſpect, while it venerated the viſionary monſters by whom they were committed. A belief in oracles and dreams, a regulation of their actions

* In a republic, when either reſpect for antient uſages, or ſimplicity, or ſuperſtition, have eſtabliſhed any myſterious ceremonies offenſive to modeſty; the law, ſays Ariſtotle, (Politic. lib. 7, cap. 17.) ſhould ſuffer the fathers of families to attend the temple and celebrate theſe myſteries, as a ſubſtitute for their wives and children. Suetonius (in Auguſt. cap. xxxi.) informs us, that Auguſtus prohibited young people of both ſexes from aſſiſting at any nocturnal ceremonies; and on the revival of the Lupercal forbade the young men to run naked. It is alſo well known, that although the laws permitted ſtrangers to celebrate the Phrygian ceremonies in honour of Cybele, they prohibited the Romans from attending; and whenever this feſtival was celebrated by *them*, all indecent and obſcene rites were proſcribed.

actions by the Pythian prophecies, by the flight of birds, by the appetite of the ſacred chicken, by the obſervations of an Augur or an Aruſpex might appear to the Greek or Roman as duties of religion, but they could not aſſuredly conſider themſelves bound by any religious obligations to chaſtity, ſobriety, or temperance.

While the credulous polytheiſt obſerved the violator of the fair Europa, and the tender Ganymede acknowledged as the father of the gods; while he obſerved that the moſt deteſtable crimes had not prevented the apotheoſis of men whom he was taught to venerate as deities; while the emblems of Venus, the Graces, and the Loves, awakened voluptuouſneſs, and excited vicious deſires; while the obſcene deity of gardens, and the god of wine demanded his veneration; while a goddeſs, honoured with equal fanaticiſm and equal indecency in Amathus, Cythera, Paphos, and Idalia, was flattered by no incenſe unmixed with the vapours of voluptuouſneſs, was pleaſed with no ſacrifice but that of modeſty, required no worſhip but that of the paſſions; while, in a word, the credulous polytheiſt ſaw himſelf ſurrounded by gods who were the protectors of his vices and his pleaſures: at ſuch a period, I ſay, morality, far from deriving any aſſiſtance from religion, received the moſt fatal injury. Her only reliance was on the wiſdom of the laws, laws obliged to repair the evils which religion occaſioned without deſtroying the religion itſelf, ſince, with regard to other objects, it

was

was abſolutely neceſſary to the good order of ſociety. The difficulty of ſucceeding in ſuch an enterprize muſt be apparent. But in the preſent ſtate of things no ſimilar obſtacles occur.

Since Europe has profeſſed a divine religion, tending to the perfection not to the depravation of manners, enſuring rather than endangering ſociety and public order; a religion which, to the vengeance of the law for crimes adds the threatenings of an impartial judge, againſt whoſe penetrating ſight neither darkneſs nor domeſtic receſſes can avail; a religion which reſtrains and directs all the paſſions; and is not only watchful over actions, but over the deſires and workings of the mind; which unites the citizen to his fellow-citizen, and the ſubject to his ſovereign; which diſarms the injured individual, but authorizes the magiſtrate to avenge his wrongs; which preſcribes certain religious forms, from which a man is abſolved whenever the neceſſities of the ſtate require him: a religion of this kind, I ſay, can never afford the ſlighteſt embarraſſment to the legiſlator. He has only to protect its authority from the inſults of infidelity and ſuperſtition; he need only preſerve its primitive purity, a purity which may be tainted by its miniſters as well as by its enemies; he has only to follow this line of conduct, and he will be juſtified in expecting every thing from the influence of religion, and fearing nothing from its abuſe.

Such is the diſtinction between the relation of laws to the true and falſe religion.

The

The principles ariſing from the firſt, muſt be principles of amendment; thoſe derived from the ſecond, of ſimple protection. Protection, I ſay, becauſe whatever prevents abuſes is of moſt eſſential ſervice to the cauſe of religion. A code of laws, for example, limiting the number of eccleſiaſtics and proportioning them to the real wants of religion, alike preventing the members of this ſacred body from rioting in opulence or ſinking in penury, although it would deprive one portion of the clergy of a wealth and power employed to improper purpoſes, would at the ſame time deliver the other part from the humiliation of wandering up and down like mendicants imploring ſubſiſtence. Inſtead of the opulence of the firſt and the beggary of the ſecond, a ſalary* (as will be obſerved hereafter) ſhould be raiſed proportionate to the rank, office, and duties of every member of the ſanctuary. A code of laws for effectuating this end would obviate many abuſes which now diſgrace religion, and would be its firmeſt ſupport and ſureſt protection; would promote at the ſame time the dignity of divine worſhip, and the proſperity of the ſtate. The expediency of this regulation muſt be evident. For were the number of eccleſiaſtics reſtricted, and rendered in ſome meaſure relative to the real wants of religion, the prieſthood would obſerve a ſtricter morality, and greater perfection in

* Principles ſimilar to thoſe of our author with reſpect to the clergy, principles replete with wiſdom, have been lately adopted by the legiſlative aſſembly of France.——T.

in its members. Then would agriculture, the arts, and commerce, rejoice in the acquiſition of a multitude of additional labourers who now intrude themſelves into the ſanctuary, diſhonour religion, and burthen the ſtate: then, in our communion particularly (where celibacy is united with the prieſthood) in proportion to the diminution of the number of thoſe from whom this continence is required, the Lord's table would be leſs frequently defiled by the vices of thoſe who aſſiſt at its duties. The peace of families and conjugal honour would not ſo often be alarmed by the miniſters of the altar, and population would ceaſe to deplore the ſacrifice of their virility.

On the ſame principle, if the eccleſiaſtics experienced neither exceſs of opulence on the one hand, nor exceſs of penury on the other, they would not incenſe mankind by their pride, nor excite contempt by their poverty.

In ſhort, if they were ſupported by the ſtate at large, and not by the charity of individuals; that eloquence, deſtined to enforce the truths of religion and inculcate the doctrines of morality, would not be degraded to the neceſſity of imploring a ſubſiſtence which the clergy are intitled to demand from the ſtate they ſerve. Then would the truths they deliver (no longer conſidered as the exordium of a petition, or the preamble to a loan) ceaſe to excite ſuſpicion. Then, in ſhort, impoſture and fanaticiſm, no longer conducive to the acquirement of wealth, would deſert the ſanctuary.

Thus

Thus ought the Chriſtian religion to be protected; and theſe are the general principles to be derived from the relation of laws to the religion of Europe. To prevent uſeleſs repetitions, I ſhall reſerve the elucidation of theſe, and the examination of other leſs general principles, to the fifth Book of this work, in which I ſhall particularly treat of laws which reſpect religion.

CHAPTER XVIII.

Eighth and laſt Object of the Relation of Laws—the Maturity of the People.

IN infancy and weakneſs men and ſtates begin their career. Long do they totter around the cradle before they acquire ſtrength ſufficient to abandon it. During this interval their laws muſt unavoidably partake of infantine imbecillity. The inconſiſtency and capriciouſneſs attending this age muſt neceſſarily appear in their codes as well as in their uſages, manners, and religious rites.

In a ſhort time they begin to emerge from childhood: their bodies expand, and by inſenſible degrees acquire a juſt proportion. The effervеſcence of puberty, followed by the vigor of youth, ſtimulates them to undertake every thing. The impetus derived from their muſcular organization conſtrains them to action. This, for ſtates as well as men,

is

is the age of paſſions, deſires, hopes, and dangers; an age in which they either ſink under the weight of their enterprizes, are enriched by induſtry, or aggrandized by conqueſt. Now commences their maturity, the proper ſeaſon for renovating their codes.

In a ſtate of infancy, the imperfection of their laws was well adapted to their ſituation. But when they began to act, and action became neceſſary to them; when events began to ſucceed each other with inconceivable rapidity; when the aſpect of ſociety was varying daily with the fluctuation of intereſts and relations, or with the acquiſition of new provinces and new ſources of wealth; then it became the duty of a wiſe adminiſtration to obviate legal defects by ſuch remedies as circumſtances would allow, till the fate of the nation was determined: reſerving to a period of greater tranquillity the enterprize of demoliſhing the antient fabric of laws, once adapted to their infirmities, but now only capable of renovation.

This period of greater tranquillity, this period when the fate of a people begins to be determined, when the true intereſts of the nation can be aſcertained, when, in ſhort, it is apparent to thoſe who govern what materials are neceſſary for fixing a ſtable foundation to that proſperity which being derived merely from a ſeries of fortunate events, cannot without ſuch an eſtabliſhment be capable of any conſiderable duration; this, I ſay, is the period of maturity: an æra the beſt adapted for the renovation of their codes.

This

This æra has already arrived to the greater part of European nations: but have they profited by it? Have they even directed a thought to ſo neceſſary a reviſion?

Alas! our codes continue as they exiſted during our infancy. Laws which governed our conduct ten centuries ago, govern us ſtill. From a ſtate of infancy we became hunters and ſhepherds, and our codes imply that we remain the ſame.* If from time to time additions have been thought neceſſary, theſe new laws have been fabricated on the old plan, from which our governments have not had ſpirit to depart; but ſuffer the motley maſs unrefined to ſubſiſt. To this immenſe collection, this moſaic-work, compoſed of myriads of party-coloured ſtones preſſed together without regularity and without proportion, we have given the appellation of juriſprudence. In the ſeaſon of our maturity we have only multiplied their number, while the maſs has increaſed in bulk and in deformity.

Monuments like theſe have the greater part of European nations raiſed to juſtice. Such is the indifference with which governments have attended to the magnificent ſtructure of legiſlation! Is it to be wondered at, then, that their proſperity has been ſo precarious—that their maturity has been followed by a decrepitude approaching to diſſolution? Yet, O ye nations, give not yourſelves up to

* The ſlighteſt acquaintance with modern juriſprudence muſt evince that this remark is not too forcible.

to deſpair! The ſeaſon of repairing theſe defects, of ſupplying theſe omiſſions, is not entirely paſt. If your governments have let ſlip the ſeaſon moſt congenial to the growth of the ſalutary plant of legiſlation, be aſſured that the wiſdom and the abilities of thoſe who now direct affairs, the aid which they have derived from philoſophy, the luminous writings which have been circulated on every ſubject, intereſting to the public weal, the very prepoſſeſſion of the people againſt exiſting diſorders, againſt a juriſprudence, which deprives us at once of property and ſecurity, form a concurrence of circumſtances more favourable to the renovation of your codes than ever appeared at any former period. If governments will at length reſolve, and avail themſelves of this opportunity; if they be not aſhamed of calling in the aſſiſtance of reaſon and her miniſters to this undertaking; their omiſſions, their former indolence, the loſs of more favourable moments will be amply recompenſed. Your decrepitude will vaniſh, and what is yet more flattering, with the vigour of youth you will gain the hope of immortality.*

With

* I might here avail myſelf of the arguments made uſe of by Demoſthenes, for inducing the Athenians not to deſpair under the preſſure of misfortunes. 'O, Athenians (ſaid he) I intreat you, while you reflect on your preſent ſituation, how deplorable ſoever appearances may ſeem, deſpair not. The very cauſe of your paſt misfortunes ſhould encourage your future hopes. Have not your evils originated in the miſmanagement of your affairs? *Hence then have ye cauſe to rejoice*, ſince, had you acted as you

With this fortunate prophecy do I terminate the present Book, in which I have only developed the general rules of the legislative science. While I have been explaining the general principles of the *absolute* and *relative* goodness of laws, while I have been examining the objects which constitute this *relation*, and thence exploring the different states of nations, and the consequent difference to be observed in their systems of jurisprudence; I have only considered the whole, I have only contemplated the superficies of this stupendous edifice. Let us now take a minuter view, let us direct our attention to its constituent parts. In this new research, laws political and economical will invite our first consideration. These will form the subject of the following Book.

you ought, and things had then been in the situation they now are, there could have remained no hope of better days.'

Πρωτον μεν ουν ουκ αθυμητεον, ω ανδρες Αθηναιοι, τοις παρουσι πραγμασιν, ουδ' ει πανυ φαυλως εχειν δοκει. ὁ γαρ εςι χειριςον αυτων εκ τȣ παρεληλυθοτος χρονȣ, τȣτο προς τα μελλοντα βελτιςον ὑπαρχει. Τι ουν εςι τȣτο; οτι ȣδεν, ω ανδρες Αθηναιοι, των δεοντων ποιȣντων ὑμων, κακως τα πραγματα εχει. Επειτοιγε ει πανθ ἁ προσηκε πραττοντων ȣτως ειχεν, ȣδ' αν ελπις ην αυτα βελτιω γενεσθαι.

Demosthenes, 1st Philippic.

The most diseased state of our legislation only shows us that our evils are not irremediable. Let us correct our laws and we shall be healed.